

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,561

HOLIDAY TOURS, INC.,

v.

Petitioner,

Respondent.

On Petition To Review and Set Aside
Order Of The Washington Metropolitan
Area Transit Commission

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 26 1964

Nathan J. Paulson
CLERK

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,561

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Petitioner,

y.

**WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION,**

Respondent.

**On Petition To Review and Set Aside
Order Of The Washington Metropolitan
Area Transit Commission**

JOINT APPENDIX

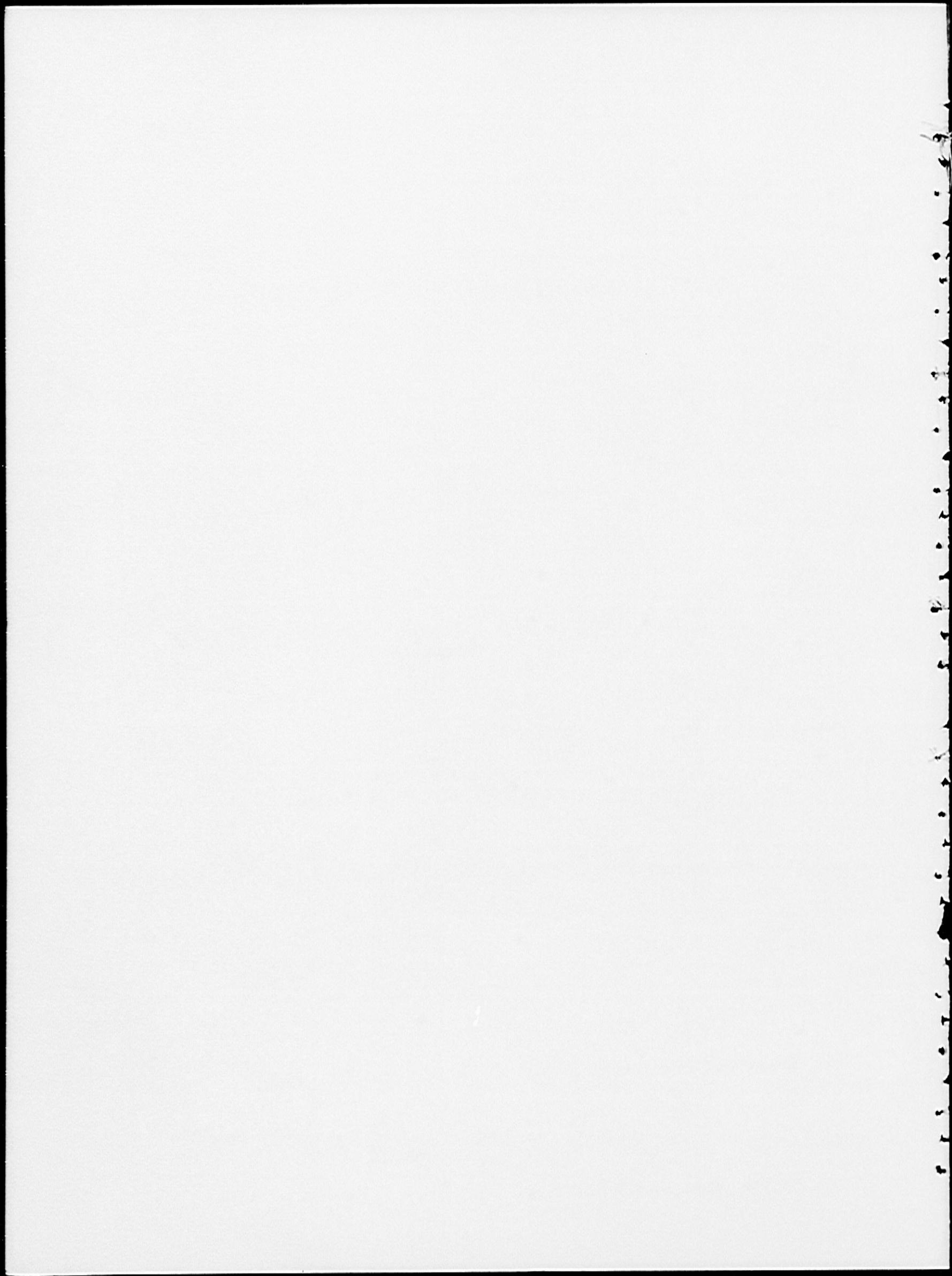


EXHIBIT NO. 1**ATWOOD TRANSPORT LINES, INC.**

Washington Metropolitan
Area Transit Commission

W.M.T.C. No. 31

E. _____ / _____

Dated 3/15/63

Victor H. Peterson

Reporter/Purchaser

March 23, 1961

Mr. Delmer Ison,
Executive Director,
Washington Metropolitan Area
Transit Commission,
722 Jackson Place, N.W.
Washington, D.C.

Dear Mr. Ison:

This will advise your Commission that during the year of 1960 we chartered buses to Holiday's Tours, Inc. Mr. Walter L. Davis, President for their use in the Washington Metropolitan area.

The buses used were our twenty-nine, (29), forty-one, (41) and forty-five, (45) passenger 1960 and 1961 Air Conditioned equipment,

Very truly yours,

Victor H. Peterson
Victor H. Peterson,
General Manager

vhp

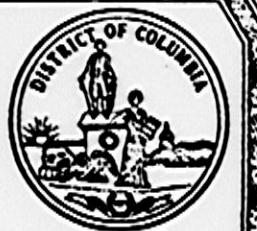
Sworn and subscribed to this the 23 day of March, 1961.

Lorraine Green
Notary Public

My Com. Exp: March 16, 1964.

EXHIBIT NO. 2

FORM LI-L-82 EPP. 1-15-58

GOVERNMENT OF THE DISTRICT OF COLUMBIA DEPARTMENT OF LICENSES AND INSPECTIONS Room 114, District Building, 14th & E Sts., N. W. Washington, D.C.		LICENSE P.U.C. PAR. 31(d)	403-08735
24761	MAKE OF VEHICLE AND SERIAL NO. CAR 3 CAD 5075-40738	 <i>C. Nottingham</i> C. T. NOTTINGHAM SUPERINTENDENT, LICENSES & PERMITS.	
LICENSE EXPIRES LAST DAY OF MARCH, 1959	DAVIS WALTER LEE 8410 WISC AVE BETHESDA		
15 MAY 1958	798 24		
REGULATION REQUIRES THIS LICENSE TO BE POSTED IN VEHICLE			

438794-9

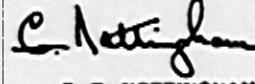
FORM LI-L-82 EPP. 1-15-58

GOVERNMENT OF THE DISTRICT OF COLUMBIA DEPARTMENT OF LICENSES AND INSPECTIONS Room 114, District Building, 14th & E Sts., N. W. Washington, D.C.		LICENSE P.U.C. PAR. 31(d)	403-09082
24751	MAKE OF VEHICLE AND SERIAL NO. CAD 507579824	 <i>C. Nottingham</i> C. T. NOTTINGHAM SUPERINTENDENT, LICENSES & PERMITS.	
LICENSE EXPIRES LAST DAY OF MARCH, 1959	DAVIS WALTER L 8410 WISC AVE NW		
6-17-58	REGULATION REQUIRES THIS LICENSE TO BE POSTED IN VEHICLE		

438794-9

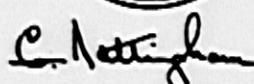
EXHIBIT NO. 4

FORM LI-L-82 (1) REV. 11-28-58

GOVERNMENT OF THE DISTRICT OF COLUMBIA DEPARTMENT OF LICENSES AND INSPECTIONS Room 114, District Building, 14th & E Sts., N. W. Washington, D.C.		LICENSE P.U.C. PAR. 31 (c)	
LICENSE NUMBER 402-0187	MAKE OF VEHICLE AND SERIAL NO. CAD 5175 77495 546	CAB OR CAR NO. 2	 C. T. NOTTINGHAM SUPERINTENDENT, LICENCES & PERMITS.
LICENSE EXPIRES LAST DAY OF: MARCH , 1960	OWNER OF VEHICLE AND ADDRESS DAVIS WALTER LEE 6 22 59 8410 WISCONSIN AVE N W		
REGULATION REQUIRES THIS LICENSE TO BE POSTED IN VEHICLE			

IBM 4386000-0

FORM LI-L-82 (1) REV. 11-28-58

GOVERNMENT OF THE DISTRICT OF COLUMBIA DEPARTMENT OF LICENSES AND INSPECTIONS Room 114, District Building, 14th & E Sts., N. W. Washington, D.C.		LICENSE P.U.C. PAR. 31 (d)	
LICENSE NUMBER 403-07066	MAKE OF VEHICLE AND SERIAL NO. CAD 507579824 CUST.# 25090	CAB OR CAR NO. 2	 C. T. NOTTINGHAM SUPERINTENDENT, LICENCES & PERMITS.
LICENSE EXPIRES LAST DAY OF: MARCH , 1960	OWNER OF VEHICLE AND ADDRESS DAVIS, WALTER L. 8410 WISCONSIN AVE., N.W. BETHESDA, MD.		
REGULATION REQUIRES THIS LICENSE TO BE POSTED IN VEHICLE			

IBM 4386000-0

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

[1]

**BEFORE THE
WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION****In the Matter of:****Application of Holiday Tours, Inc.,
for a Certificate of Public Convenience
and Necessity (Grandfather Application)****Application
No. 18
Docket
No. 31****Room 307
1801 North Moore Street
Arlington, Virginia
Monday, April 15, 1963**

The above-entitled matter came on for hearing, pursuant to notice, before the Washington Metropolitan Area Transit Commission, at 9:30 a.m., Russell W. Cunningham, General Counsel, presiding.

BEFORE:**RUSSELL W. CUNNINGHAM, Esquire, General Counsel.****APPEARANCES:**

* * * * *

[6]

* * * * *

MR. JASKIEWIECZ: There are several preliminary matters.

First, I do not believe that the Chairman indicated that there was a protest from W V & M.

I did receive such a protest and I have no objection to their appearing as a protestant in this proceeding.

I have not, however, received any protest since October 15, 1962, or, more specifically, since October 19, 1962 — within the 30-day period specified in the Commission's notice, on behalf of any of the parties represented by Mr. Kahn.

My understanding, Mr. Chairman, of the Commission's

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order No. 210, is that everything was stricken from the record except the application and the exhibits, and we were starting de novo.

In the circumstances, I object to the appearance on behalf of the Gray Line, Diamond Tours and A B & W as being improper for this hearing.

MR. KAHN: If the Examiner please, I am familiar with the Commission's order or notice contending that it strikes certain portions of the docket in this particular case, but I do not believe the Commission can lawfully strike the properly filed protest, filed with this Commission against the grandfather application of Holiday Tours, Inc.

Counsel for Holiday Tours, Inc., has been constantly aware of the interest of A B & W and of The Gray Line and of Diamond Tours in the case.

I do not believe that, as a matter of law, this Commission can strike a protest properly filed at the time the Grandfather Application was submitted to the Commission.

MR. JACKIEWIECZ: I am aware of it, but I take the position that, in order to protect the interests of my client -- he is entitled to protection under the rules, under the Commission's order and under the notices as published by the Commission and, in the interests of orderly procedure and sound regulation, I object, and my objection should be sustained.

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I had no way of knowing whether or not The Gray Line and Diamond Tours were, in fact, going to appear here or put on any evidence, or whether I had to worry about them in any way.

In that sense, I object to their participation, on the grounds that we have had no notice whatsoever, and that proceeding with them as protestants, without notice, would prejudice our case.

MR. KAHN: In regard to the matter of putting on evidence, this is a Grandfather Application, we understand, and there is no burden of going forward on protestants here.

Whether they put on evidence or not is immaterial. The burden of proof is upon the applicant.

MR. JASKIEWIECZ: How we proceed makes a difference with who is here, and I think that is rather apparent.

If we have no one here we proceed in one fashion. If we have 20 protestants here we proceed in another fashion and, to the extent that we have not been put on notice in regard to these protestants, I think they should be excluded from participation.

MR. CUNNINGHAM: Did you file a protest subsequent to the Commission's order, cleaning this file back to the application?

MR. KAHN: No, we did not, Mr. Examiner.

MR. CUNNINGHAM: Well, I am going to take a five

minute recess to think further about this.

(Whereupon, a short recess was taken.)

MR. SMITH: On behalf of D. C. Transit, I would like to file a copy of the protests, that is, of D. C. Transit System, Inc., and D. C. Transit of Maryland, so that the file will be complete.

MR. CUNNINGHAM: All right.

Have you seen this, Mr. Jaskiewicz?

MR. JASKIEWICZ: Yes.

MR. CUNNINGHAM: I have read very carefully the objections to the protest, or lack of protest, by A B & W.

My inclination right now is to sustain the objections insofar as giving A B & W a status as a protestant in this proceeding, but in view of the fact that the Compact requires or provides that any person affected

by an official order or decision of the Commission may petition for reconsideration, the utilization of this Section of the Compact for A B & W at the conclusion of this hearing could conceivably result in further hearings and further delay of this proceeding.

In view of the fact that this matter has consumed numerous months of time, I am of the opinion now that I will entertain an oral motion to intervene by those parties that I am not willing to allow to come in as protestants.

I believe, in this matter, I am strengthened by the recent ruling of the United States Court of Appeals for

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the District of Columbia, captioned "GSA and Other Portions of the United States Government against the Washington Metropolitan Area Transit Commission."

MR. KAHN: Mr. Examiner, I don't quite understand your ruling. Is it that you would entertain an oral motion to intervene?

Did I understand correctly: That counsel for A B & W Transit Company, The Gray Line and Diamond Tours would be prevented from participating in the case?

MR. CUNNINGHAM: Not following a motion to intervene that would be granted.

MR. KAHN: Well, I make a motion to intervene, Mr. Examiner, in behalf of A B & W Transit Company, The Gray Line, Inc., and Diamond Tours, Inc., except that during the recess I have found that, under date of September 24, 1962, I advised this Commission and counsel for the applicant that a copy of a petition for reconsideration of the Grandfather Application of Holiday Tours, Inc., had been received, and that the companies whom I represent had a continuing interest in the disposition of the Grandfather Application.

However, in order to expedite this matter, rather than get into legal technicalities, it is my opinion that though the action of the Commission, to the extent of its so-called cancelled protest, is beyond the scope of its authority and the Compact, as long as we can accomplish the

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[11]

hearing today I make such a motion to intervene on behalf of the companies whom I represent.

MR. JASKIEWICZ: We oppose such a motion to intervene, on the grounds we indicated previously and, further, on the basis that I have heard no reason why these carriers have not notified us that they intend to protest, after the publication.

I further object to it on the ground of its being wholly improper and contrary to the rules of practice of this Commission, and, specifically, Rule 16, governing intervention.

MR. CUNNINGHAM: There was a time when I would probably have agreed with you, Mr. Jaskiewicz, but in view of our recent treatment by the Court of Appeals —

MR. JASKIEWICZ: Before you rule, I would like to make one further comment and it is this: I do not think that the fact that this case has not been set, or heard, prior to this time, and has been the subject of various orders, should in any way affect the ruling by the Examiner.

MR. CUNNINGHAM: Very well. The motion to intervene is granted.

* * * * *

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MR. JASKIEWICZ: One further inquiry: Is the

[17]

Examiner or the Commission in a position to advise the applicant at this time of the authority of the Commission for publishing notice of this Grandfather Application in a newspaper of general circulation?

MR. CUNNINGHAM: I will ask the reporter to read that back.

(Whereupon, the reporter read from the record.)

MR. CUNNINGHAM: Do you mean advertising the fact that this application had been filed?

MR. JASKIEWICZ: Yes, sir. I have looked over the rules of the Compact and I can find nothing in there that suggests notice insofar as the Grandfather Application is concerned.

Further, we take the position that, by virtue of the notice, we have received protests to the application that we did not have in the first instance — before the file was cleansed.

I simply would like the applicant to know at this time the reason for this, or the authority for it.

MR. CUNNINGHAM: As you know, Section 4(a) of Article XII provides:

"that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such

certificate without requiring further proof that public convenience and necessity would be served by such operation and, without further proceedings —"

Section 15 of the Third Article also provides:

"The Commission shall have power to perform any and all Acts, to prescribe, issue, make, amend and rescind such orders, rules and regulations as it may find necessary or appropriate to carry out the provisions of this Act."

Pursuant to the statutory language and the authority designated to him to carry on the ordinary operations of the Commission from day to day, the Executive Director felt that the Commission was unable, on the basis of the application alone, to determine and issue any operating authority in this application.

It was felt by him that, in order to fully advise the Commission, and develop all pertinent facts before it, as concerns this application, certain procedural steps should be taken: The first of which was that notice of the filing of the application should be made.

I might add that this has been done in practically every instance

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of a Grandfather Application filed here, with the exception — actually, I should not say "with the exception" because I know of none.

Secondly, the Executive Director felt that a hearing

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was necessary to fully advise and develop facts and evidence to completely inform the Commission as to what transportation this applicant was bona fide engaged in.

Therefore, this is the basis and reason for the notice requirement, and the hearing requirement in this application.

MR. JASKIEWICZ: Thank you, sir.

We would like to request, Mr. Chairman, the opportunity to refer — only on this issue of publication and notice — to the various other Grandfather Applications in which you have indicated that such similar notice has been published.

I am not sure what they are. I certainly accept your statement on it, but I would like to be free to refer to the Commission's official files in this regard, to come to my own conclusion and determination.

* * * * *

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WALTER LEE DAVIS

was called as a witness by and on behalf of the Applicant, and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * *

[21]

* * * * *

BY MR. JASKIEWICZ:

- Q. Will you state your name, sir? A. Walter Lee Davis.
- Q. What is your present business address? A. 4806 Leland.
- Q. Where is that? A. In Chevy Chase, Maryland.

Q. With what concern are you associated? A. Holiday Tours, Incorporated.

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Q. In what capacity are you associated with Holiday Tours, Incorporated? A. As president.

Q. You are the major stockholder in that company? A. Yes, sir.

Q. Who are the other stockholders? A. Daniel W. Wackerman and Corinne Grim, secretary and treasurer.

Q. What is the total number of shares of stock that are outstanding — including what you have? A. There are ten altogether.

Q. How much do Mr. Wackerman and Miss Grim have? A. One each.

Q. And you have the balance? A. That's right.

Q. Where was Holiday Tours incorporated? A. The District of Columbia.

Q. When? A. November, 1959.

Q. Was it in business prior to that time? A. Yes, sir.

Q. When did that begin — ?

MR. DAVIS: I would like to query counsel. Was this corporation in business prior to that time — was that your question?

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MR. JASKIEWICZ: No. I will rephrase it.

BY MR. JASKIEWICZ:

Q. Were you engaged in business prior to the incorporation in 1959? A. Yes, sir.

Q. What business was that? A. Holiday Tours.

Q. Doing what? A. Sightseeing.

Q. When did you go into business? A. 1957.

Q. From 1957 to 1959 you conducted business as what? A. A partnership.

Q. Who was your partner? A. Ralph Manuel.

Q. How long was he your partner? A. From the early part of 1958.

Q. And then you operated as an individual? A. That's right.

Q. What is the business of Holiday Tours, Incorporated, at the present time? A. What is the business? Sightseeing — that is the prime business.

Q. What was its business on March 22, 1961? A. Sightseeing.

Q. How long have you been at your present place of business, which you indicated as 4806 Leland? A. Since November.

Q. And from 1957 to November, 1962, were you located at one place of business? A. Yes, 8410 Wisconsin.

Q. Wisconsin Avenue? A. Wisconsin Avenue, Northwest.

MR. CUNNINGHAM: Is that actually in the District of Columbia?

THE WITNESS: No, that is in Bethesda, Maryland.

BY MR. JASKIEWICZ:

Q. Would you tell us the reason why you changed your location from 8410 Wisconsin Avenue to your present business address?

A. Well, they tore the building at 8410 Wisconsin down, to build a new motel, which will be completed the first of next month. We will move back in with offices there as soon as it is completed — at the same address.

Q. You have indicated that you have been in the sightseeing business — is my understanding correct — since 1957? A. That is correct.

Q. Other than seasonal changes, has your business been continuous?

A. Yes, sir.

Q. Generally, where have you conducted your sightseeing operations?

MR. KAHN: I object. The best evidence would be documentary rather than generalization, unless the question purports to ask him what is the scope of the Grandfather Application, and I believe that is defined in the application.

MR. JASKIEWICZ: I am just asking him for his general area of operations -- nothing more, but we will introduce additional evidence on that.

However, I don't agree with counsel that documentary evidence is the best evidence.

MR. CUNNINGHAM: At this stage of the game the objection is overruled.

MR. KAHN: Yes. I will withdraw my objection on the basis of the statement made by counsel.

MR. DAVIS: May I inquire with respect to the question? I presume -- and please correct me if I am wrong -- that this witness will confine his answers to questions asked with respect to the metropolitan area of the District of Columbia.

Do you intend to prevent him from going beyond that?

MR. JASKIEWICZ: Our intent, insofar as my questions are concerned, is to relate them to the area that is under the

jurisdiction of this Commission.

MR. CUNNINGHAM: I would assume that all questions would go strictly to that phase, and that any departure would be accompanied by satisfactory explanation on the part of counsel.

MR. JASKIEWICZ: Any departure would be unintentional, and we agree to be so limited.

MR. BY. JASKIEWICZ:

Q. Is Holiday Tours, Inc., at the present time a member of the Bethesda-Chevy Chase Chamber of Commerce? A. Yes, sir.

Q. Was it on March 22, 1961? A. Yes, sir.

Q. What other organizations was Holiday Tours a member of in March of 1961? A. Well, the Washington Board of Trade, the Washington Convention and Visitors Bureau, the Hotel Greeters, and NATO.

Q. What is that, sir? A. The National Association of Travel Organizations.

Q. Do you recall any others? A. Well, --

Q. We will go on to something else.

In March of 1961 -- would you describe the facilities that you had at 8410 Wisconsin Avenue?

A. Well, we had an office there with parking area for our own equipment as well as for people who would drop in for tours, that we would have come there to depart for tours, and who would leave their vehicles there.

We had a large area with rest room facilities and a regular tourist information service.

Q. What parking facilities did you have there? A. We had adequate parking for the customers' cars as well as our own equipment.

Q. What other offices did you maintain in March of 1961? A. We had an office in the Fairfax Hotel.

MR. CUNNINGHAM: Where is that located?

THE WITNESS: At 2100 Massachusetts Avenue in the District of Columbia.

We had offices at the Holiday Inn on Glebe Road.

BY MR. JASKIEWICZ:

Q. Where is that? A. In Arlington, Virginia.

Q. Is that all you had? A. We had offices in Frederick, Maryland -- an information center up there.

Q. How long have you had offices at the Fairfax Hotel and the Holiday Inn? A. At the Fairfax since 1958 and the Holiday Inn since they opened in 1960.

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Q. What, if any, temporary offices have you had? A. We have had temporary offices at Frederick, Maryland, and Woodbridge, Virginia.

Q. In regard to the sightseeing business, would you just tell us generally how you sell to patrons who are going on your sightseeing tours; how you did it in March of 1961? A. Well, the people -- the tourists -- would come into our office; one of the offices that we operated -- they went to various motels and hotels and saw our brochure, and they would book our tour.

Q. What did you do? Did you sell them a ticket, or did you -- ? A. We sold them a ticket sometimes, and sometimes the hotel or motel sold the ticket themselves; but in our offices we sold it ourselves, of course.

Q. In other words, for every patron you had, you sold a ticket? A. That is correct.

Q. And those tickets were for various prices? A. Yes, sir.

Q. What, if any, service have you provided on an hourly basis? A. We have provided limousine service.

Q. Tell us about that?

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A. Where people had a small group that wanted to be alone, shall we say, they would charter a limousine, and that service was \$7.50 an hour and \$10 an hour with a licensed guide.

Q. In other words, they would lease the entire unit? A. They would be in a group by themselves, and then they could direct the driver to go where they might want to go.

Q. Did you sell them tour tickets? A. No, sir -- only an hourly basis for them.

Q. Could you tell us how many people you had employed in March of 1961? A. Oh, between 15 and 20.

Q. Well, how many people do you have employed at the present time,

would you say? A. Approximately the same number.

Q. Does the number of people you have on your payroll and the number of people you use, vary from month to month, or season to season? A. Oh, yes.

Q. Why is that? A. Because it is a seasonal basis, and we have to call in additional guides in the summer months.

Q. What personnel did you have at the Fairfax Hotel in March of 1961?

A. We had two men that operated it in March of 1961.

Q. Did they sell tickets for you there? A. Yes, sir.

Q. What personnel did you have at the Holiday Inn in March of 1961? A. One lady.

Q. What was her job, or what were her duties? A. To sell tickets and assist the tourists to find out the way out of town, or the way downtown, or where different points of interest could be located.

Q. Do you personally conduct any other business, or is the sightseeing business your sole means of livelihood? A. Well, other than the gift shop -- we only have one gift shop at the moment, in addition to the sightseeing.

MR. CUNNINGHAM: Did you have that gift shop in March of 1961?

THE WITNESS: The one I had I have sold, and I have since acquired another one to replace it.

BY MR. JASKIEWICZ:

Q. Let me clarify that. Where did you have the gift shop in March of 1961? A. At the Fairfax Hotel.

Q. Well, where do you have the gift shop now? A. At the Holiday Inn, at Catholic University.

Q. Now, in March of 1961, could you estimate approximately

how much of your income was derived from the operation of the gift shop

at the Fairfax Hotel? The percentage would be sufficient, if you could give us that? A. Probably ten percent.

MR. JASKIEWICZ: I would like to refer to the official file or, more particularly, to the application, No. 18, which was filed by this applicant on June 8, 1961, and ask him a series of questions for the purpose of identifying the application itself and the exhibits.

MR. CUNNINGHAM: All right.

BY MR. JASKIEWICZ:

Q. Mr. Davis, I show you what has been marked Application No. 18--?

A. Yes.

Q. -- purporting to be an application of Holiday Tours, Inc., filed June 8, 1961, for sightseeing authority to conduct sightseeing operations and charter operations, and ask you if, on page 2, your signature appears?

A. Yes, sir.

Q. I refer you to Exhibit 1 and ask you if that generally sets forth the nature of the operations conducted by Holiday Tours, Inc., as of March 22, 1961? A. Yes, sir.

Q. I refer you to what has been marked for identification as Exhibit No. 1A and ask you to tell us what that is, please?

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A. That is a letter from Atwood Transport Lines to Mr. Delmer Ison, Executive Director of the Washington Metropolitan Area Transit Commission, 722 Jackson Place, Northwest, Washington, D. C.

Shall I read it?

MR. JASKIEWICZ: No.

Mr. Examiner, I planned to introduce a copy of that letter in evidence in the proceeding. It looks like I didn't stick it in my briefcase.

Oh, yes; I did.

BY MR. JASKIEWICZ:

Q. Mr. Davis, I want to show you what purports to be a copy of a letter dated March 23, and ask you if that's the same letter -- A. Yes.

Q. -- or a copy of the same letter which was attached to the application, Exhibit 1-A. A. Yes, sir.

MR. JASKIEWICZ: May we have this --

MR. DAVIS: What is the year of that, Mr. Jaskiewicz?

MR. JASKIEWICZ: Nineteen-sixty-one.

MR. CUNNINGHAM: Is that identified as an exhibit?

MR. JASKIEWICZ: Yes, sir.

MR. CUNNINGHAM: Is that a portion of the application?

MR. JASKIEWICZ: Exhibit No. 1-A; yes, sir.

MR. CUNNINGHAM: Attached to the application, itself?

MR. JASKIEWICZ: Yes, sir.

MR. CUNNINGHAM: Do you want it marked for identification?

MR. JASKIEWICZ: Yes, sir.

MR. CUNNINGHAM: Well, why do you want it in the record?

MR. JASKIEWICZ: Well, I just want it as part of the over-all presentation we are making today, Mr. Cunningham.

I have a series of other exhibits, and I would like this to all be in one place rather than have to go back and --

MR. CUNNINGHAM: All right.

I will identify this as Exhibit No. 1.

(The letter referred to, being a photocopy of a letter dated March 23, 1961, addressed to Delmer Ison, Executive Director, Washington Metropolitan Area Transit Commission, from Victor H. Petersen, General Manager, Atwood Transport Lines, Inc., was marked for identification as Exhibit 1.)

MR. DAVIS: Exhibit 1, Mr. Hearing Examiner?

MR. CUNNINGHAM: Exhibit 1.

BY MR. JASKIEWICZ:

Q. I refer you to Exhibit 1-B of the application and ask you to tell us what that document is. A. It's a statement from D. C. Transit

System, Incorporated, a bill for a bus that was leased for ninety-one dollars and a quarter.

Q. I refer you to Exhibit 1-C and ask you what that is? A. That is a brochure that we offer people showing the tours that we offer.

Q. Was that particular brochure in use in March of 1961?

A. Yes, sir.

Q. I refer you to Exhibit 1-D, consisting of four pages, and ask you to tell us what they are, please? A. Yellow pages from the telephone directory.

Q. What do they contain of any significance to this proceeding?

A. An ad by Holiday Tours.

Q. For what years? A. For 1960, 1960, '59 and '58.

Q. Have you advertised in the yellow pages of the telephone directory since 1960? A. Yes, sir.

Q. I refer you to Exhibit 1-G of the application and ask you to tell us what that is? A. Bill for advertising in the Washington Telephone

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Directory.

Q. Very well. Is Exhibit 2 of the application true and correct, to the best of your knowledge? A. Yes, sir.

Q. I refer you to Exhibit 3, which lists certain equipment operated. I ask you if that was the equipment operated by Holiday Tours, Inc., in March of 1961? A. Yes, sir.

MR. KAHN: Is that Exhibit 2?

MR. JASKIEWICZ: Three.

MR. KAHN: Three.

MR. JASKIEWICZ: To the application.

BY MR. JASKIEWICZ:

Q. The bottom half of Page 1 of Exhibit 3 to the application is entitled "Additional Equipment Utilized". Is that statement correct --

A. Yes, sir.

Q. -- as to the equipment, additional equipment, used by Holiday Tours, Inc.? A. Yes, sir.

Q. I would like to call your attention to this line and ask you if there is a typographical error in there? A. Yes. It should be 45 persons.

Q. Instead of what? A. Five persons.

Q. The next is Exhibit 4.

MR. JASKIEWICZ: I would like to see the map.

MR. CUNNINGHAM: Oh.

BY MR. JASKIEWICZ:

Q. I refer you to Exhibit No. 4 and ask you if this is a map which was filed with your application, as required by the application, showing the territory in which you would operate? A. Yes, sir.

Q. Does Exhibit 5 set forth such financial data as required by the Grandfather Application? A. Yes, sir.

MR. KAHN: What was the question?

MR. JASKIEWICZ: Does Exhibit 5 contain such financial data as required by the Grandfather Application?

MR. KAHN: Oh, I object to the form of the question. There isn't any requirement under the Compact to file any financial information.

MR. JASKIEWICZ: Well, I believe there is.

MR. KAHN: It is a legal conclusion.

MR. CUNNINGHAM: It was probably filed pursuant to the Commission's regulations.

MR. JASKIEWICZ: I think that's right; yes.

MR. CUNNINGHAM: Well, in response to the Commission's regulations?

MR. JASKIEWICZ: That's correct.

MR. KAHN: All right.

MR. JASKIEWICZ: Yes.

BY MR. JASKIEWICZ:

Q. Does Exhibit 6 show the necessary applications made to do business in the States of Maryland and Virginia? A. Yes, sir.

Q. And does Exhibit 7 contain a statement as to the tariffs of Holiday Tours? A. Yes, sir.

MR. SMITH: Mr. Examiner, I don't see the purpose of going through each and every one of the exhibits attached to the application. They speak for themselves, and any statements as to what they purport to be are self-serving statements and are to be so considered.

MR. JASKIEWICZ: Well, Mr. Examiner, it's just good practice, as far as I am concerned, to have the witness identify the various exhibits to the application that is before the Commission, and I don't see why it should bother anyone.

MR. CUNNINGHAM: It doesn't bother me. Go ahead.

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BY MR. JASKIEWICZ:

Q. Does Exhibit 8 accurately set forth the officers and stockholders? A. Yes, sir.

Q. Is Exhibit 9 a copy of the articles of incorporation in effect at the time you filed the application? A. Yes, sir.

Q. Does that complete the application? A. Yes.

MR. SMITH: Mr. Examiner, I want to enter an objection.

If the material that was introduced on questioning by Mr. Davis purports to be a verification that the material contained in the exhibits is what it states, it is in improper form. I object.

If it's nothing more than an identification that these are the exhibits attached to the application, then I accept that; but if, for example, on the last question as to the articles of incorporation, Mr. Jaskiewicz is asking that question and expects that answer to go into the record as being a true statement without any certification from the corporation commission of the

jurisdiction in which the articles were docketed, then I object.

MR. JASKIEWICZ: I'm not sure I understand the objection, but certainly this witness -- if protestants have

any reason to believe those aren't the proper articles of incorporation as identified by Mr. Davis, let them bring forth evidence --

MR. SMITH: I merely used that as an example.

I object to the Examiner accepting any testimony as to these exhibits, as to the truth or falsity of their contents.

If the testimony is elicited just to show Exhibits 1 through 9 or 10 or whatever it may be, are, in fact, those exhibits which were attached to the application, the Grandfather Application, then I have no objection; but if it goes further than that, if this testimony is designed to be supportive of those exhibits, then I object --

MR. JASKIEWICZ: Well, sir --

MR. SMITH:--on the grounds he is not a proper party to testify to many of the exhibits and their contents.

MR. JASKIEWICZ: Mr. Examiner, he signed the application. He is relying on the application, and he is simply stating these are true.

He signed the application under oath, and certainly they're in there for the merit and the substance rather than the mere fact that they were attached to the application. I wouldn't have gone through them --

MR. SMITH: Then I object.

I object specifically to -- the one that comes to

mind immediately is -- the articles of incorporation. To be proper evidence, acceptable evidence, in any record, the articles of incorporation requires a certificate under seal of the issuing jurisdiction.

If that exhibit -- I don't know whether or not it contains it, but if it does, fine. If it doesn't, my objection is in the record, Mr. Examiner.

MR. JASKIEWICZ: Well, I'm not familiar with those particular regulations requiring that.

MR. CUNNINGHAM: Does this exhibit 9, the articles of incorporation of Holiday Tours, Inc., purport to be a duplicate of the original?

MR. JASKIEWICZ: Absolutely.

MR. SMITH: Mr. Examiner, let the record show that I am looking at the Commission's file and that Exhibit 9 has no seal on it. It appears to be merely a carbon copy of a form filed with the Office of the Superintendent of Corporations, District of Columbia. It has no certification on it whatsoever to the effect that these articles have, in fact, been filed and are on record in the Office of the Superintendent of Corporations of the District of Columbia, and my objection to Exhibit 9 stands unless Mr. Davis' testimony is restricted only to the fact that this is an exhibit which he attached to his original application.

If it purports to be anything else, then please note

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my objection.

I would like to look over the rest of the exhibits, if I may, Mr. Examiner.

I note in here there is, for the record, a form to be filled out stating information with the Commonwealth of Virginia, State Corporation Commission, entitled "Application for a Certificate of Authority to Transact Business in Virginia". I object to this particular document because it is nothing more than a copy of an answer to such a form and has no certification by anybody in the State of Virginia to the effect that it has, in fact, been accepted or certificated as having been filed with the Commission, and any authority flows from there.

MR. CUNNINGHAM: Excuse me. We will go off the record just a moment.

(Off the record.)

MR. CUNNINGHAM: Back on the record.

MR. SMITH: Mr. Examiner, going through the record again, specifically, the exhibits attached to the application, as noted by Mr.

Davis, in answer to Mr. Jaskiewicz' questions, there is an exhibit entitled "Exhibit 6-A" which purports to be a letter signed by Mr. Davis, addressed to the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore 1, Maryland, which states that the corporation, Holiday Tours, Inc., intending to qualify

pursuant to certain sections of the Maryland Code, certifies a number of matters, such as the principal office of the corporation in the State of Maryland, that they are incorporated in the District of Columbia and their mailing address, and I object to this as being anything more than a self-serving statement, and if it's intended to go and if Mr. Davis' testimony goes to the merits of whether or not what he states in this letter of June 7, 1961, is, in fact, true I object.

If it is merely to say this letter was sent to the Corporation Commission, then I have no objection; but anything having to do with the merits of anything he says in that letter -- please note my objection.

MR. CUNNINGHAM: All right. Your objection is noted.

MR. DAVIS: Mr. Examiner, may I, for the record, join in that objection.

MR. CUNNINGHAM: What weight the Commission gives these documents is a matter for their concern. Frankly, it is obvious, since there is no seal, this is not a document that has been certified as true and correct by the individuals involved, speaking now at the articles of incorporation and other documents of State officials.

I don't know what other conclusion you can draw from them, but this applicant says this document purports to

be the articles of incorporation.

MR. JASKIEWICZ: Well, I would like to get established on the record, Mr. Examiner, what the Commission's rules mean when they say "a copy of the articles of incorporation".

Now, if I understand, your comments are such that that means a certified copy of the articles of incorporation, then I assume that the rules are being changed and I ask leave to file that.

I think this type of an objection is without merit, particularly when the rules say nothing about a certified copy.

MR. CUNNINGHAM: As far as I am concerned, the exhibits as filed meet the requirements of the Commission.

MR. DAVIS: Well, Mr. Examiner --

MR. CUNNINGHAM: Now, if you want to contest the veracity of these documents, if anyone does, that certainly can be done.

MR. DAVIS: May I be heard on this?

MR. CUNNINGHAM: Yes.

MR. DAVIS: If I understood the objection, to which I have interposed an objection for W V & M and asked that the record state that we are on record in opposition, too, and if I understand Mr. Jaskiewicz' questions with respect to the exhibits which have been attached as part of the application, he went further than what he has referred

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to in the rules and regulations, and Mr. Smith made it quite clear that if the exhibits to which he referred were merely being filed for the purpose of meeting the requirements for filing purposes only, he had no objection; but if it was Mr. Jaskiewicz' intention, through the examination of this witness, to prove the contents, then that objection was noted, and to that extent I also noted my objection.

I think they are two materially different things.

MR. SMITH: That is a satisfactory explanation of my objection, Mr. Examiner.

MR. CUNNINGHAM: Well, then, it gets down to a point, in my opinion, as to the weight which the Commission wishes to attach to these documents.

All right. Go ahead, Mr. Jaskiewicz.

MR. JASKIEWICZ: Well, before going on, I want to be sure what we have gotten ourselves into here, Mr. Examiner.

MR. KAHN: If this will help, Mr. Jaskiewicz, for example, -- I haven't seen the document -- if Mr. Davis purports to state on the record that he wrote a letter to the State of Maryland qualifying or seeking to qualify the company, that doesn't prove that the company was qualified. That's not evidence of qualification. The most that could be indicated would be an application.

I think that's the basis of Mr. Smith's and Mr.

Davis' and my own interest here.

I have no objection to putting in copies of correspondence. It merely indicates action taken by this particular applicant, to which I would have no objection, couldn't have any objection, but it doesn't prove that the corporation was qualified.

BY MR. JASKIEWICZ:

Q. Has any official of the District of Columbia ever told you that your corporation was not qualified to do business in the District of Columbia?

MR. SMITH: Objection. That's pure hearsay, Mr. Examiner, what any official of the District of Columbia may have told him.

MR. JASKIEWICZ: Well, now, Mr. Examiner, this is a principal who is testifying here under oath, and certainly he can testify -- and ought to be permitted to testify -- as to what action, if any, the District of Columbia or any State official did with respect to him.

Now, we don't have to drag every official from Maryland and from Richmond and Baltimore to satisfy these protestants, and if we do, we're going to be put to unnecessary expense and burden. There is no reason for it.

If they've got anything to disprove anything in that application, let them bring it forward on cross examination in their own case. We don't have to put it

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in the way they want us to put it in.

MR. SMITH: I disagree with that, Mr. Examiner.

The burden is on the applicant to show certification and acceptance, to prove, as to Allegation 1, as he has alleged, that the corporation, Holiday Tours, Inc., was, in October, 1959, incorporated in the District of Columbia. The burden is on him to show such incorporation by properly certificated articles of incorporation.

If he alleges the corporation is qualified in the State of Maryland, the burden is on the applicant to show, to prove, in fact, that it is qualified by properly certificated articles of incorporation.

This is a very normal and usual course of proceedings.

MR. JASKIEWICZ: That is Mr. Smith's rules, but it is not the rules of evidence, --

MR. SMITH: I submit it is in accordance with the rules of evidence.

MR. JASKIEWICZ: -- and I ask for a ruling on the objection.

MR. CUNNINGHAM: You will get it in just a minute.

May I have that question read back?

(The reporter read the question as follows:

"Has any official of the District of Columbia
ever told you

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that your corporation was not qualified to do
business in the District of Columbia?")

MR. CUNNINGHAM: The objection is overruled.

MR. SMITH: Note my exception.

MR. DAVIS: May I join --

MR. CUNNINGHAM: None need be made.

MR. DAVIS: May I join in that exception, sir.

MR. CUNNINGHAM: None need be made.

Exceptions are provided automatically by the regulations.

MR. JASKIEWICZ: Do you have the question in mind, Mr. Davis?

THE WITNESS: Yes, sir.

MR. JASKIEWICZ: Would you answer it please?

THE WITNESS: No, sir.

BY MR. JASKIEWICZ:

Q. With respect to your application in the State of Virginia, what happened?

MR. DAVIS: I object to the form of the question.

What does he mean -- what happened?

MR. JASKIEWICZ: To the application.

MR. DAVIS: I don't understand your question.

MR. CUNNINGHAM: What application?

MR. JASKIEWICZ: The application referred to by Mr. Smith to do business in the State of Virginia.

MR. CUNNINGHAM: What exhibit?

MR. JASKIEWICZ: I believe it's part of Exhibit 8 or 9, Mr. Examiner.

MR. KAHN: Mr. Examiner, if you will recall or if the Commission will recall, this matter was the subject of discussion in the public convenience and necessity application and the Commission required the applicant to produce copies of the correspondence.

I think the applicant has that correspondence and that what actually happened is best represented by the correspondence the applicant has.

MR. JASKIEWICZ: Well, I'm not sure I agree with that statement.

I have one copy of the correspondence. That certainly can be made available to anybody to look at.

MR. KAHN: It was made an exhibit in the other case.

MR. JASKIEWICZ: I have only got one copy of it.

Do you have an extra copy?

MR. CUNNINGHAM: Mr. Jaskiewicz, it would seem to me that if

the corporation is qualified to do business in the State of Virginia, it would be a very simple matter to produce the document that qualifies it.

If it is not qualified and has attempted to be qualified, it would seem to me that you should qualify your question initially as to whether or not the attempt was made

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and, if so, has it been done by correspondence or oral conversations, and if it was done by correspondence then I think we are limited to what transpired on the correspondence.

As I understand the situation in the State of Virginia or any other state, that is the way any state normally handles this type of thing.

MR. JASKIEWICZ: That is very true, Mr. Examiner, and this matter was -- Well, let me ask Mr. Davis this.

BY MR. JASKIEWICZ:

Q. There was an application to do business in the State of Virginia filed by Holiday Tours? A. Yes, sir.

MR. CUNNINGHAM: Could I declare a short recess?

(Thereupon, at 11:30 a.m., a five-minute recess was taken.)

MR. CUNNINGHAM: On the record.

MR. DAVIS: Mr. Examiner, you will help me, I am sure, and this question will be helpful to everyone: In view of the fact that Mr. Davis at one time during his testimony stated -- and I am sure the testimony so indicates -- he, personally, was engaged in this business and traded as Holiday Tours, and now we also find at a later date this business was incorporated and it is referred to as Holiday Tours, Inc., -- I believe that's going to become a pertinent

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part of the record in this case, and counsel's question really went to Holiday Tours -- may we presume that he's referring to Holiday Tours, Inc., a corporation, --

MR. JASKIEWICZ: Yes.

MR. DAVIS: -- or just how are we going to identify this throughout this hearing?

MR. JACKIEWICZ: Your presumption is correct. It is perfectly agreeable to me insofar as that question is concerned.

MR. CUNNINGHAM: I would assume whenever the term "Holiday Tours" is used, it is used in referring to the corporation.

If there is any reference to the partnership, it will be made by either Mr. Davis or Mr. Jaskiewicz, preferably in both names.

MR. JASKIEWICZ: That is correct, because the concern was incorporated in March of 1961.

That would be the normal presumption.

Mr. Examiner, with regard to the State of Virginia, I do have one copy of a series of correspondence, which I am sure all counsel are familiar with, concerning Holiday Tours and doing business in the Commonwealth of Virginia.

MR. CUNNINGHAM: Are those just letters, Mr. Jaskiewicz?

MR. JASKIEWICZ: Yes, sir.

MR. MR. CUNNINGHAM: I think we can get some copies run off.

MR. JASKIEWICZ: Well, I may have some extra copies.

MR. CUNNINGHAM: All right.

MR. JASKIEWICZ: Also, I have a copy from the State of Maryland. So, perhaps, I can continue on that line this afternoon or tomorrow.

BY MR. JASKIEWICZ:

Q. Mr. Davis, since filing your application in June of 1961, since March of 1961, has there been any change in the equipment operated by Holiday Tours, Inc.? A. Well, the equipment has been increased.

Q. What type of equipment and just what are the circumstances?

A. Well, we --

MR. KAHN: I object.

There isn't any requirement under the Compact in the Grandfather Application to establish continuity of operation after March 22, 1961, and it's immaterial and irrelevant what happened to the equipment on and after the critical date.

MR. JASKIEWICZ: Well, we can --

MR. KAHN: This language differs in this Compact

as against the language in the Interstate Commerce Act.

MR. JASKIEWICZ: Well, we can maybe shorten it up with a clear stipulation by all counsel that there's no requirement for establishing any continuity of operations after March 22, 1961.

That's the way I read the statute. However, I'm a little fearful if the evidence abruptly stops at March 22, 1961, and, while I would be willing to make that stipulation, Mr. Examiner, I think I ought to be permitted to introduce such additional evidence to not necessarily show continuity, but to show operations -- that would tend to show operations -- on the Grandfather date.

MR. CUNNINGHAM: Well, for the benefit of counsel and the parties, the Examiner is of the opinion that what is critical here is what transportation was involved on and before March 22, 1961, because on that basis a certificate will or will not issue, and if, in fact, a certificate does issue pertaining to the transportation on or before March 22, 1961, then the only basis in which operations subsequent to that date become important would be involved in a revocation proceeding.

Now, that's my opinion, of course, --

MR. JASKIEWICZ: I agree with that, Mr. Examiner, --

MR. CUNNINGHAM: -- in the course of operations in this hearing, and we will proceed under that theory.

MR. JASKIEWICZ: -- with this one qualification, however; while I agree it is prior to March 22, 1961, for the benefit of a complete presentation and also to show or to intend to show operations on that date, I think the applicant ought to be permitted leeway to go beyond March 22, 1961, not indefinitely, for the next two or three years, but certainly as part of the year 1961 which, in my opinion, would tend to show operations on the critical date.

MR. KAHN: Well, the question to which I had objection was whether the number of units or the equipment was increased, and I think the best evidence of what equipment may have been operated or owned and operated in April, for example, 1961, would be the registrations of the vehicles on exhibits such as you have identified in the application.

We don't accomplish anything by asking the witness was it increased and then imposing the burden upon protestants to cross-examine and fix the dates and the like.

MR. JASKIEWICZ: Well, I don't --

MR. KAHN: I would like to make this statement so my statement on the record will be completely clear: The Grandfather provisions of the Interstate Commerce Act, after setting the critical date as June 1, 1935, continue and say "and has so operated since that time."

Now, those words are not included in the Washington Area Metropolitan Transit Commission Compact.

MR. JASKIEWICZ: I agree with that, Counsel.

My only comment I had was I think we are entitled to introduce evidence, as I say, slightly beyond the critical date in order to show, which I would argue would tend to show, operations on the critical date, and if we're precluded from doing that, then that will materially affect our case.

MR. KAHN: Well, I would object to any oral statement of this

witness as to what equipment he was operating, for example, in April, 1961, for the reason that this is not a part of the Grandfather case and, more importantly, that his oral testimony is not the best evidence.

MR. JASKIEWICZ: Well, I disagree with that emphatically, Mr. Examiner. This witness is under oath and he is testifying as to a number of things. Every one is under oath and subject to being tested by the protestants, if they have any inkling of any untruth, and they are entitled to that right.

Now, if we have got to come in with a piece of paper every time the witness utters his mouth under the guise of the best evidence, we're going to be here forever and a day, and it's not required. That's why the witness was administered an oath.

MR. KAHN: I think this Commission can note judicially that this witness and this carrier has been before

the Commission in a very lengthy proceeding and that the reasons for some of the objections are prompted by the facts that were developed in a prior hearing before this Commission.

I again state that it isn't unreasonable to ask the applicant to reduce to exhibit form the type of and character of vehicles that were operated in April, 1961, if he thinks that's material, or to bring in written evidence of the ownership or registration; but I do object to any oral testimony where better evidence is available and no reason for its presence has not been explained or excused.

Applicant doesn't have records of his equipment.

MR. CUNNINGHAM: Well, I think we have had a learned dissertation by counsel now, and, if I may, the Examiner rules that the objection to this question is sustained.

MR. JASKIEWICZ: That was the question as to equipment; is that correct?

MR. CUNNINGHAM: Yes, sir.

MR. JASKIEWICZ: Now, there were two grounds to that, Mr. Examiner. Would the Examiner be willing to state the grounds for sustaining?

MR. CUNNINGHAM: Yes.

I am sustaining the objection because the size or the number of vehicles operated today is completely immaterial,

as far as I am concerned, as to the operations bona fide engaged in on March 22, 1961.

MR. JASKIEWICZ: Very well, sir.

BY MR. JASKIEWICZ:

Q. Your application states that your utilized bus equipment prior to March 22, 1961.

MR. KAHN: I object. Counsel is paraphrasing the application.

MR. JASKIEWICZ: Well, whatever it says.

MR. KAHN: The application doesn't say that at all.

MR. JASKIEWICZ: Well, whatever it says.

MR. KAHN: Well, whatever the application says, I have no objection to what is said in the application.

BY MR. JASKIEWICZ:

Q. The application refers to buses in conjunction with Holiday Tours, does it not? A. Yes, sir.

Q. Will you tell us in 1959, the year 1959, from what company or companies you obtained buses and under what circumstances?

MR. DAVIS: For what purpose, sir? I am sorry.

I am directing my question to the Chair.

I think the question is not specific enough.

They obtained buses for what?

MR. JASKIEWICZ: Well, I'm not going to change the question just to satisfy counsel.

I think the question is proper.

MR. CUNNINGHAM: Let's let counsel develop this a little more. Then I think you will be in a position to note an objection.

MR. DAVIS: All right.

MR. CUNNINGHAM: As far as I am concerned, the question is unobjectionable in its present state.

MR. JASKIEWICZ: Do you have the question in mind, Mr. Davis?

THE WITNESS: Ask it again, please.

MR. CUNNINGHAM: Read it back.

(The reporter read the question as follows:

"Will you tell us in 1959, the year 1959, from what company or companies you obtained buses and under what circumstances?")

THE WITNESS: In 1959 we obtained buses from Suburban Transit Company, leased for sightseeing purposes.

BY MR. JASKIEWICZ:

Q. In 1960 from what company or companies did you obtain buses and under what circumstances and for what purpose? A. We leased buses from Atwood Transport in 1960 for

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the purpose of sightseeing.

Q. And in 1961? A. In 1961 we leased from Atwood Transport, D.C. Transit and W V & M.

Q. For what purpose? A. For sightseeing purposes.

Q. Now, directing your attention now to the buses furnished by Atwood -- What is the correct name of that company? Do you know, sir? A. Atwood Transports.

MR. JASKIEWICZ: For the record, that's Atwood's Transport Lines, Incorporated.

BY MR. JASKIEWICZ:

Q. What type of bus did they lease? A. Twenty-nine passengers; 41-passenger; 45-passenger.

Q. Air-conditioned? A. Air-conditioned; yes, sir.

Q. Did they furnish the driver or did you furnish the driver?

A. They furnished the driver.

Q. And on what cost basis did you obtain buses from Atwood's Transport in 1960 and in 1961? A. By the hour.

Q. Now, in conjunction with using these buses in 1959, '60 and '61, how would tickets be sold?

MR. KAHN: Are you talking about all the companies or are you only talking about Atwood?

MR. JASKIEWICZ: I am talking about all three--

MR. KAHN: All right.

MR. JASKIEWICZ: -- for '59, '60, '61.

MR. KAHN: All right.

MR. JASKIEWICZ: I can go through it one by one.

MR. KAHN: No, that's all right.

THE WITNESS: Through various offices and people who represented us in motels and hotels.

BY MR. JASKIEWICZ:

Q. Just how were tickets sold? On an individual basis or what?

A. On an individual basis; yes, sir.

Q. In other words, Holiday Tours sold the tickets? A. Holiday Tours sold the tickets.

Q. Now, with respect to Suburban Transit Company, in the year 1959, individual tickets were sold for that operation, were they not?

A. Yes, sir.

Q. Now, did they provide the driver? A. Not always.

Q. Well --

A. On occasion, but sometimes we provided the driver.

Q. Do you recall who that driver was, sir? A. Mr. Beckelman.

Q. Would you spell that, please? A. B-e-c-k-e-l-m-a-n.

Q. And just what did he do with the Suburban Transit Company buses? A. Well, when he drove the bus himself, he conducted the entire tour; but when they sent a driver, one of their drivers, who was not a licensed guide, he went along with him and showing him the pattern that we run, the stops that we made, and instructed the people how long to remain in certain buildings and when to come out.

Q. With respect to Atwood, you said they furnished the driver?

A. They furnished the driver.

Q. What was the nature of the operation in connection with Atwood's?

A. Well, we sent a driver along with him, a guide, as a lecturer, and to show him the pattern until their drivers got accustomed to the stops made and the scheduled times that we were giving in various buildings.

Q. When Atwoods' provided a driver and you sent one of your own personnel along, who told the driver where to go? A. Our guide told the driver where to go and how long --

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told the people how long they would be in certain buildings.

Q. Now, what about D. C. Transit?

How was that handled?

A. Well, when we startted doing business with D. C. Transit, their driver and lecturer had worked for us on previous occasions and he knew our pattern, see, of operation and the different buildings that we included on our brochure and the tour. So, it wasn't necessary to put a driver on, a guide and driver on, with him to tell him because he was already familiar with the operation.

Q. What instructions, if any, did you give the D. C. Transit driver when he first reported to you in the morning, for example, or when did he report to you? A. Well, at 8:30 in the morning, at 8410 Wisconsin, and then we would depart from there and start picking up at the Bethesdan, at eight-thirty-five, and In Town, at eight-forty.

Q. What instructions did you give the driver?

That's all I am concerned with now.

A. Give him a manifest, with the number of people on it, where they were to be picked up, the buildings, and what buildings to take them to, and then he would return the ones that weren't going all day at noon.

Q. What authority, if any, did the D. C. Transit driver have to deviate from those instructions?

A. None.

Q. I believe in 1961 you also used buses or obtained buses from another protestant here, the Washington, Virginia and Maryland Coach Company. A. Yes, sir.

Q. And what was the operation with respect to them? A. They furnished the driver and we furnished a man with their driver, until he got accustomed with our pattern, and then he was on his own.

Q. Did you give him similar instructions as the D. C. Transit driver? A. Absolutely the same.

Q. What authority, if any, did the driver for W V & M Coach Company have to deviate from your instructions? A. None.

Q. Prior to the critical date of March 22, 1961, how were repairs handled for the units that your company operated? A. Oh, with different repair garages; Capitol Cadillac.

Q. Where do you obtain your patrons or customers for sightseeing?

A. From our --

MR. KAHN: I object -- immaterial.

This is a factual presentation of what was being

done.

MR. JASKIEWICZ: This is preliminary, Mr. Examiner.

The next question is specifically where did he obtain them in 1961.

This is a preliminary, general question, Counsel.

MR. KAHN: I withdraw the objection.

THE WITNESS: From our offices, information booths and motels and hotels.

BY MR. JASKIEWICZ:

Q. Can you tell us now, please, what hotels, motels, tourist homes and the like you obtained customers in 1961? A. Well, the Rockville Plaza, Colonial Manor --

MR. CUNNINGHAM: Excuse, Mr. Davis.

THE WITNESS: Yes.

MR. CUNNINGHAM: Counsel, does your question go from January through March 22?

MR. JASKIEWICZ: Yes. I should say, Mr. Examiner, during that period and prior.

MR. CUNNINGHAM: I wanted to make sure we knew what we were talking about --

MR. JASKIEWICZ: Right.

MR. CUNNINGHAM: -- when we said 1961.

MR. JASKIEWICZ: Right.

MR. CUNNINGHAM: So, you confine yourself, Mr. Davis, when you are talking about 1961, to the period from

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January, 1961, through March 22, 1961.

MR. JASKIEWICZ: And I would like the question also to embrace 1959 and 1958.

MR. CUNNINGHAM: You mean in accordance with that last statement?

MR. JASKIEWICZ: Yes, sir.

MR. CUNNINGHAM: All right.

MR. DAVIS: I noted throughout, and I raised no question, -- the Examiner raised the question now and puts the burden on the applicant as to what he means -- he has been testifying with respect not to 1961, but dates generally.

Now, as I say, I am not here to establish the facts. It's up to the applicant, himself, and I am sure Counsel is not seeking any help from me, but I note, now that you have called his attention to these particular dates you are now referring to, that this record and all the questions that pertain to the dates are just as general with respect to years.

MR. JASKIEWICZ: Of course, we haven't completed our case, yet, Mr. Examiner, and, as matters go on, we'll be pinpointing it with a little more --

MR. KAHN: Particularity.

MR. JASKIEWICZ: -- particularity, -- thank you. -- and I think that will satisfy Counsel.

I might say, in terms of 1961, as I indicated to

the Examiner earlier, that we think we should be entitled to or allowed a little leeway because subsequent to that date does tend to show operations on that date. You just don't begin operations or cease them as of a date.

I think we should be entitled to that leeway, recognizing, of course, that's a critical date.

Now, do you have the question in mind, Mr. Davis?

THE WITNESS: Well, Colonial Manor, the Rockville Plaza, the Bethesda, In Town, Chevy Chase, Beaver Lodge, Birches Tourist Home, Still Inn, and Fairfax Hotel, Bellevue Hotel and the Holiday Inn in Arlington, and numerous other hotels, where we would have calls to pick up there.

We would pick up if we had a call at some of the places that people got our brochures through some AAA source or somewhere else.

BY MR. JASKIEWICZ:

Q. Let me ask you this, so we are clear on the record: You mentioned Holiday Inn is in Arlington. A. Yes, sir.

Q. Where is the Fairfax Hotel and where is the Bellevue Hotel?
A. The Fairfax Hotel is at 2100 Mass., and the Bellevue is at -- it's off of North Capitol.

Q. They are both in the District of Columbia? A. District of Columbia; yes, sir.

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Q. What about the others? Could you tell us where they are located? A. The others are located on Wisconsin Avenue, coming in -- well, one of them is at Rockville, and the other is on Rockville Pike, and the balance of them are on Wisconsin Avenue coming into the District of Columbia; and, of course, the Holiday Inn is in Arlington, Virginia.

Q. Now, you testified, sir, that the sightseeing business is seasonal in nature. Was it seasonal in 1961? A. Yes, sir.

Q. And what would be the busy period? A. Well, from April through September.

MR. CUNNINGHAM: Of any year?

THE WITNESS: Any year; yes, sir.

BY MR. JASKIEWICZ:

Q. And October to March would be your slow -- A. Slow months; that's right.

MR. JASKIEWICZ: Mr. Examiner, I would like to have marked for identification a single-sheet document, which is photocopies of two licenses issued to Walter Lee Davis.

MR. CUNNINGHAM: All right. This may be marked for identification as Exhibit No. 2.

(The document referred to, being a photocopy
of two licenses, one

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bearing the number 403-08735 and the other
bearing the number 403-09082 was marked
for identification as Exhibit 2.)

MR. JASKIEWICZ: Mr. Examiner, I might state I do have copies of the licenses here. If the Examiner, we will put them in as evidence, but --

MR. CUNNINGHAM: You do have the originals?

MR. JASKIEWICZ: I do have the originals; yes.

BY MR. JASKIEWICZ:

Q. Mr. Davis, I hand you what has been marked for identification as Exhibit 2 and ask you what that document purports to show. A. Public Utilities Commission license issued to Walter Lee Davis, 8410 Wisconsin, for the 15th of May, 1958, to March of 1959.

Q. And these were for what type of vehicles? A. Cadillac limousine.

Q. These vehicles were licensed to Walter Lee Davis of 8410 Wisconsin Avenue, Northwest? A. Yes, sir.

Q. Now, did you use them in conjunction with any business?

A. Yes, sir. Sightseeing.

Q. And you are the Walter Lee Davis involved here?

A. Yes, sir.

Q. And in what business did you use these vehicles? A. Sightseeing.

Q. And those two licenses expired in March of 1959; is that correct?

A. Yes, sir.

MR. JASKIEWICZ: Mr. Examiner, I have another single-sheet document, which consists of photocopies of two licenses issued to Walter Lee Davis and Walter L. Davis, and I ask that this be marked for identification.

The identifying number on it could be 402-1087.

MR. CUNNINGHAM: This may be marked for identification as Exhibit No. 3.

(The document referred to, being a photocopy of two licenses, one bearing the number 402-1087 and the other bearing the number 403-07066, was marked for identification as Exhibit 3.)

MR. CUNNINGHAM: Do you have the originals of these with you, Mr. Jaskiewicz?

MR. JASKIEWICZ: Yes, sir.

BY MR. JASKIEWICZ:

Q. I refer you to what has been marked for identification as Exhibit No. 3 and ask you to tell us what that document shows, please.

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A. That shows a PUC license issued to Walter Lee Davis, 8410 Wisconsin Avenue, with "C" identification on it, which is unlimited as to the number of passengers.

Q. What is the cost of that license? A. A hundred dollars.

Q. Now, both of these licenses -- A. This date was from 6/22/59 to March of 1960.

Q. Now, both of these licenses represented on Exhibit 3 for identification are for Cadillac automobiles, are they not? A. Yes, sir; Cadillac automobiles.

Q. They are licensed to Walter Lee Davis and Walter L. Davis of 8410 Wisconsin Avenue. Are you that individual? A. Yes, sir.

Q. And did you use them in conjunction with any business? A. Yes, sir.

Q. And what business was that? A. Sightseeing.

Q. And you were doing business under what name? A. Holiday Tours.

MR. SMITH: That's Holiday Tours, not incorporated; correct?

MR. KAHN: This is the period in which this business was a corporation.

Mr. Davis is --

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I don't want to -- I mean, if we can get some explanations as we go along -- my notes indicate that Mr. Davis said this business was incorporated in 1959. These licenses run from that period into '60, but they are in the individual name.

BY MR. JASKIEWICZ:

Q. Are those licenses correctly reflected as being in your individual name? A. Yes, sir.

Q. And were they used in conjunction with the business of Holiday Tours, Inc., during this period? A. The period from '59 to '60; yes.

We incorporated -- yes. They were used because we incorporated in '59.

MR. JASKIEWICZ: All right, sir.

Mr. Examiner, I have a single-sheet document, and ask that it be marked for identification, being licenses of the PUC, the identifying number on the top license being 402-0171.

MR. CUNNINGHAM: It may be marked for identification as Exhibit No. 4.

(The document referred to, being a photocopy of three licenses, the first bearing the number 402-0171, the second bearing the number

402-0097 and the third bearing the number 402-0172, was marked for identification as Exhibit 4.)

MR. CUNNINGHAM: Off the record.

MR. CUNNINGHAM: Back on the record.

BY MR. JASKIEWICZ:

Q. Mr. Davis, you have in your hand what has been marked for identification as Exhibit 4, and I ask you what this document purports to show.

A. PUC license for Cadillac limousines, with "C" identification, which is also unlimited as to the number of passengers you can carry, and it's from the date of 7/18/60 to March of 1961.

Q. And that's through the last day of March, 1961? A. Yes, sir.

Q. All three of the licenses represented on Exhibit 4? A. Yes, sir.

Q. Now, these are in the name of Holiday Tours, Inc.? A. Holiday Tours, Inc., yes, sir.

Q. And that is the applicant here; is that correct? A. Yes, sir.

Q. Now, from '60 to '61, did you change your method of licensing?

Is that the reason for its showing as Holiday

Tours rather than Walter Lee Davis? A. That's right. Holiday Tours, Inc.

Q. I call your attention to the License No. 402-0097, and right in the middle of that license there appears to be some strike-overs over the word "Cab". Do you see those?

A. Yes, sir.

Q. Did you make those strike-overs?

A. No, sir.

Q. Now, do these licenses reflected in Exhibits 2, 3 and 4 represent equipment which you operated either as Walter Lee Davis in conjunction with Holiday Tours or Holiday Tours, Inc., and for Holiday Tours, Inc.?

A. Yes, sir.

Q. And during these periods of time did you also have other vehicles licensed?

A. Yes, sir.

Q. Were any of the vehicles represented in Exhibits 3 through 4 licensed in any other jurisdiction?

A. Yes, sir.

Q. Which?

A. In Maryland; also the State of Virginia.

MR. JASKIEWICZ: Mr. Examiner, --

THE WITNESS: The Commonwealth of Virginia.

MR. JASKIEWICZ: Excuse me.

THE WITNESS: The Commonwealth of Virginia.

MR. JASKIEWICZ: This is a convenient breaking place. That is all the questions I have in conjunction with those.

MR. CUNNINGHAM: All right.

Off the record.

•
(Off the record.)

MR. CUNNINGHAM: We will recess until tomorrow morning at nine-thirty on the seventh floor of the Arlington County Courthouse.

(Thereupon, at 12: 06 p.m., the hearing was recessed, to reconvene at 9:30 a.m., Tuesday, April 16, 1963.)

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Arlington, Virginia
Tuesday, April 16, 1963

* * * * *

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MR. JASKIEWICZ: Mr. Examiner, I think at this time I would like to proceed by introducing, through this witness, a series of letters signed by myself and also a representative of the State Corporation Commission concerning the authority of Holiday Tours to transact business in the State of Virginia.

MR. CUNNINGHAM: All right.

MR. JASKIEWICZ: It's a five-page document, if the Examiner please.

MR. CUNNINGHAM: This may be marked for identification as Exhibit No. 5.

(The group of five letters referred to — the first being a photocopy of a letter dated June 7, 1961, addressed to the Commonwealth of Virginia, State Corporation Commission, from Leonard A. Jaskiewicz; the second being a photocopy of a letter dated June 8, 1961, addressed to Leonard A. Jaskiewicz, from William C. Young, Charter Examiner, State Corporation Commission, Commonwealth of Virginia; the third being a photocopy of a

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letter dated June 14, 1961, addressed to William C. Young, Charter Examiner, State Corporation Commission, Commonwealth of Virginia, from Leonard A. Jaskiewicz; the fourth being a photocopy of a letter dated June 16, 1961, addressed to Leonard A. Jaskiewicz, from William C. Young, Charter Examiner, State Corporation Commission, Commonwealth of Virginia, and the fifth being a photocopy of a letter dated June 20, 1961, addressed to William Young, Charter Examiner, State Corporation Commission, Commonwealth of Virginia, from Leonard A. Jaskiewicz — was marked for identification as Exhibit 5.)

Thereupon,

WALTER LEE DAVIS

resumed the stand and testified further as follows:

DIRECT EXAMINATION (Cont'd.)

BY MR. JASKIEWICZ:

Q. Mr. Davis, I show you what has been marked for identification as Exhibit 5 and ask you, to the best of your knowledge, whether that represents the document signed by me and

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addressed to the State Corporation Commission and from the State Corporation Commission to me concerning the authority required by Holiday Tours to do business in the State of Virginia? A. Yes, sir; it is.

MR. DAVIS: For purposes of clarity, Mr. Examiner, may I have an expression as to the purpose of this five-page exhibit?

Does he intend by this exhibit to actually prove that Holiday Tours has certain authority from the State Corporation Commission of the Commonwealth of Virginia?

MR. JASKIEWICZ: We don't hold any authority. I think the documents speak for themselves. We don't need any authority. That's the purport of them, Counsel.

MR. DAVIS: May I understand that correctly and say: It is not the purport of this exhibit, consisting of five pages, to show that the applicant holds authority; it is the applicant's intent, through this exhibit, to show that it does not need authority to render the service herein referred to?

MR. JASKIEWICZ: Referred to in this document; that is correct, or in the exhibit, I should say.

I also have a single-page document I ask to be marked for identification, Mr. Examiner, which is a letter

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received by me concerning the doing of business by Holiday Tours in the State of Maryland.

MR. CUNNINGHAM: It may be marked for identification as Exhibit No. 6.

(The document referred to, being a photocopy of a letter dated June 15, 1961, addressed to Leonard A. Jaskiewicz, from John J. Rauh, State Department of Assessments and Taxation, State of Maryland, was marked for identification as Exhibit 6.)

BY MR. JASKIEWICZ:

Q. Does Exhibit 6 for identification represent, to the best of your knowledge, the document received by me from the State of Maryland concerning Holiday Tours, Inc., doing business in the State of Maryland?

A. Yes, sir.

MR. DAVIS: Would you indulge me for a minute?

I didn't get time to get my notes made on Exhibit 5, sir.

With your indulgence, sir, I would like to raise a question again at to the purport of this exhibit.

What is it that this exhibit purports to show?

MR. JASKIEWICZ: Mr. Examiner, the exhibit is to show that Holiday Tours, Inc., has, in fact, filed a qualification

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application with the State of Maryland and that that Department has qualified the corporation to do business in that State, just as the letter says.

That's the reason for it.

MR. DAVIS: I raise this question, sir, if I may: Referring to the first line in the body of the letter, "This acknowledges receipt of your qualification application", we don't know what - I, at least, don't know what - they're referring to. Qualification application for what?

MR. JASKIEWICZ: Qualification to do business, Mr. Examiner.

That's what the second -

MR. DAVIS: Is this the meat packing business? Store business?

MR. JASKIEWICZ: Well, Mr. Examiner, attached to the Grandfather Application, under the date of June 7, as Exhibit 6, is a letter to the State Department of Assessments and Taxation, signed by the President of Holiday Tours, Inc.

It's for Holiday Tours. It's certainly not for any meat packing concern.

MR. CUNNINGHAM: Did you get any other document back -

MR. JASKIEWICZ: No, sir.

MR. CUNNINGHAM: - from the Department of Assessments

and Taxation, other than this letter, Mr. Jaskiewicz?

MR. JASKIEWICZ: That is the only letter I received from the State of Maryland, the State Department of Assessments and Taxation.

MR. CUNNINGHAM: They did not give you any kind of a document to display in your office?

MR. JASKIEWICZ: They did not.

BY MR. JASKIEWICZ:

Q. Mr. Davis, the Grandfather Application contains several pages from the yellow pages of the telephone directory for the years '58, '59 and '60. Has your company advertised in the yellow pages subsequent to that time, specifically in 1961? A. Yes, sir.

Q. Did it so advertise in March 22, 1961? A. Yes, sir.

Q. What other advertising concerning your sightseeing business did Holiday Tours do on and prior to March 22, 1961? A. Well -

MR. DAVIS: A Point, sir, if I may: Again now we are getting into the question of Holiday Tours and Holiday Tours, Inc.

We know that the corporation was formed prior to the general date. I believe it would be more explicit to us and more

helpful if we could refer to particular dates in the year 1961 because it becomes a very, very important matter as this hearing is concerned.

MR. CUNNINGHAM: All right.

Could you revise your questions to so meet the objection of Mr. Davis?

MR. JASKIEWICZ: Well, I could take it year by year, Mr. Examiner.

BY MR. JASKIEWICZ:

Q. Mr. Davis, from 1957 to November of 1959, at the time Holiday Tours, Inc., was incorporated, what additional advertising did you do?

A. Well, we had brochures out over the country. We had an ad in the yellow pages and — I don't know — several little publications.

Q. Did you — A. Charitable organizations we gave ads to.

The Bethesda Chamber of Commerce Year Book — the Directory, they call it.

Q. All right. Since November of 1959, when Holiday Tours, Inc., became incorporated and up to March 22, 1961, what additional advertising did you do in addition to the yellow pages? A. Well, we advertised through the AAA, and still through the Chamber of Commerce, their Buyers' Guide

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out there, and —

MR. DAVIS: If I may, sir, I believe that answer is not responsive to the question.

The question is: What additional advertising did he do through the yellow pages?

Is that the question?

MR. JASKIEWICZ: That is not the question.

MR. DAVIS: Would you mind having the question read back, sir?

(The reporter read the question as follows:
"Since November of 1959, when Holiday Tours, Inc., became incorporated and up to March 22, 1961, what additional advertising did you do in addition to the yellow pages?")

MR. DAVIS: I withdraw my objection, sir.

MR. JASKIEWICZ: Did you complete your answer, Mr. Davis, or was there other advertising?

THE WITNESS: Well, we had billboards up the road, on Highway 40, on 240.

That's about the extent of it.

BY MR. JASKIEWICZ:

Q. What - A. Of course, we had brochures in all the Holiday Inns over the country.

Q. Would that be the same type or brochure as contained in the Grandfather Application? A. Yes, sir.

Q. On March 22, 1961, and prior to that date what, if any, state travel councils was Holiday Tours a member of? A. Well, Maryland Travel Council and Virginia Travel Council.

I think that's all.

Q. What advertising, if any, did you through those councils ?
A. Nothing except that they distributed our brochures.

Q. Now, in conjunction with the brochure which appears in the application as Exhibit 1-C, Mr. Davis, I show you Exhibit 1-C to the application, which is a brochure for Holiday Tours, Inc., and contains a description of various tours set forth.

Now, in terms of the tours set forth in there, what deviation from those tours, if any, was permitted once a customer purchased a ticket?
A. The only deviation from the tour as it's set out, as each tour is set out here on the brochure, is when a building is closed, like, for instance, the White House will be closed on Sunday and Monday. Then we substitute another building for it - the Museum of Natural History, ordinarily.

Q. Well, let's look at Tour 2, as described in Exhibit 1-C to the application. A. The only deviation would be - the only deviation on that tour would be - because of some building that might be closed.

Q. All right. Which buildings could be closed on that particular tour and what days? A. Well, Bureau of Printing and Engraving is closed on Saturday and Sunday. So, then we substitute a building for it - usually the Museum of Natural History.

Q. What about the White House? A. The White House is closed on Sunday and Monday. So, we substitute another building for it, and another portion of the Smithsonian Institution.

Q. Now, when you say "we", you mean Holiday Tours, Inc.?

A. Holiday Tours, Inc.

Q. Now, what choice, if any, does the patron or customer have in selecting the building on Sunday when [the] White House is closed?

A. They have none.

Q. In other words, you make the selection of the choice? A. Yes, sir.

Q. Now, would the same be true if the Bureau of Engraving would be closed on Saturday or Sunday?

What choice would the customer have to pick out where he would want to go? A. They have no choice in the matter. They take the substitutions that we make.

Q. If I asked the same question, sir, with respect to Tour 1 and 3 and 4, to the extent that a building might be closed, would your answers be the same? A. The answer is absolutely the same.

Q. Are there any other buildings that you represent to the public you would take them to that would be closed in addition to the Bureau of Engraving and Printing and the White House? A. No, sir.

Q. Now, the answers that you just gave with respect to the substitution of buildings - would that apply to March 22, 1961? A. Yes, sir.

Q. Now, once you sold a series of tickets, - and again limiting our question to March 21, '61, and prior to that time - what was the physical operation?

Just what did you go through in picking up your customers and when did you pick them up, and just what was the operation? A. Well, we would start at the office at 8410 Wisconsin.

Q. At what time?

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A. At 8:00 o'clock some days, and then eight-thirty the other days.

Q. What would be the distinction as to whether you would — A. Well, on Saturday the first building doesn't open until 9:00 o'clock. So, we wouldn't leave there until eight-thirty so the people wouldn't have to stand outside and wait for a building to open, and that is the same situation on Sunday; but during the week days we start at eight o'clock in order to get them down early because the Bureau of Printing and Engraving is open then, and they open at eight o'clock, and we can get them in the building. We don't have to leave them on the street.

Q. And then what would you do, sir? A. Then, when we would leave the office, we would go on in Wisconsin Avenue and stop at the Bethesdan and In Town Motel, generally about five minutes apart, and we had some tourist homes down there. We had Birches Tourist Home. We had Beaver Lodge, the Still Inn, Cumberland House, and we'd pick up all the way down Wisconsin, and we would go to the Fairfax Hotel.

Q. What time did you get to the Fairfax Hotel? A. Well, we left at eight-thirty. We would be there at nine.

Q. And if you left —

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A. The tour that left at eight o'clock — we would set up at eight-thirty at the Fairfax.

Q. Then the stops you made in between would be between eight and eight-thirty or eight-thirty and nine? A. That's right, but we always pick up — still pick up at the Fairfax at the same time — eight-thirty on the weekdays and nine o'clock on Saturday and Sunday.

Q. And that was your schedule, sir? A. Yes, sir.

Q. All right. A. And the first stop would be the Bureau of Printing and Engraving, of course.

Q. Suppose you had somebody at another motel or another hotel or another point; how would you get them? A. Well, now, over in Silver

Spring we would generally send another vehicle for them and tie them into the tour.

Q. Where would you start? A. We would tie them in at the first building - Bureau of Printing and Engraving. When they would come out, we would pick them up there. They would get there about the same time, or the same way - another vehicle would go to the Holiday Inn. Then he would bring his people in from the Holiday Inn and put them in the Bureau of Printing and Engraving, and they would come out and then we would tie them together there.

Q. In other words, the people would be brought together at the first building? A. That's right.

Q. Then they would follow the particular tour involved; is that correct? A. Yes, sir. Then from the Bureau of Printing and Engraving we would go to the Smithsonian Institute.

Q. And this was your method of operation in '61 - in March of 1961? A. Yes, sir.

Q. Now, I notice in your Tour 3 and also Tour 1 you also referred to a steamer ride to Mount Vernon.

What effect, if any, did that steamer ride have upon your scheduling of your tours? A. Well, the steamer would depart at 2:00 o'clock. So, then, we would have to allow the people just enough time for lunch after they had gone through these buildings in order to pick them up about 20 minutes of 2:00 in front of the Archives Building to get them down to the boat.

Q. In other words, you had to make the schedule of the boat; is that correct? A. Oh, yes; definitely. They left at 2:00 o'clock whether we were there or not.

Q. And did you conduct that operation in conjunction

with the steamer to Mount Vernon in March of 1961? A. Yes, sir. Ever since we have been in business.

Q. Can you tell us, sir, the amounts of insurance you had in effect on March 22, 1961? A. I had fifty, a hundred thousand and ten thousand property damage.

Q. And could you tell us the insurance company and the — A. American Casualty Company. Policy No. T-693536.

Q. Now, in what states was notice of that insurance filed? A. The State of Maryland, the District of Columbia, the Commonwealth of Virginia.

Q. Prior to March 22, 1961, Mr. Davis, did you make any inquiries into the States of Maryland, Virginia and the District of Columbia as to what requirements you might have to follow? A. Yes; sure.

Q. And what were they? A. Well, I went to the PUC Office, got the PUC license.

Q. By the "PUC", you mean — A. Public Utilities Commission.

Q. Of the District of Columbia? A. Of the District of Columbia.

I went to the Interstate Commerce Commission and talked to Mr. Clark up there.

Q. When did you talk to him? A. Oh, probably '58, '59, right along there.

And then he said that we —

MR. KAHN: I object to anything that he said to him. That's hearsay.

MR. CUNNINGHAM: Objection sustained.

BY MR. JASKIEWICZ:

Q. Who else did you see? A. A lady in his office, his secretary that was out front.

Q. What about the State of Virginia? A. Well, I went down and talked to Mr. Seibert about an intra-state permit in Virginia, and he told me that this new Metropolitan Area Transit Commission —

MR. KAHN: Oh, I object again.

MR. CUNNINGHAM: Stop right there, Mr. Davis.

MR. KAHN: Mr. Davis, you can't repeat what people told you.

MR. JASKIEWICZ: Just tell us who you went to see.

THE WITNESS: I went to see Mr. Seibert.

MR. JASKIEWICZ: All right.

BY MR. JASKIEWICZ:

Q. Now, what has been the position of Holiday Tours,

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Inc., insofar as the compliance with the requirements of the state laws?

A. We complied with them in every respect.

MR. SMITH: I object to the question and the answer, Mr. Examiner. He is asking for a legal conclusion.

He can say what he attempted to do in compliance with the state laws, but he cannot conclude that he did, in fact, comply.

MR. JASKIEWICZ: Well, I will accept that modification.

BY MR. JASKIEWICZ:

Q. What was the intent of Holiday Tours, Inc., in terms of compliance with state laws? A. Well, we certainly intended to comply with all of them.

Q. What was the intent of Holiday Tours with respect to compliance with any applicable Federal statute? A. Well, we complied with that, too, to the best of our knowledge.

MR. SMITH: Same objection, Mr. Examiner.

MR. CUNNINGHAM: Well, I take it what you are saying is you attempted to comply?

THE WITNESS: Yes; we attempted to comply.

MR. JASKIEWICZ: Well, that is what my question was.

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MR. CUNNINGHAM: Yes.

THE WITNESS: And, to the best of our knowledge, we did comply.

BY MR. JASKIEWICZ:

Q. On what occasions, if any, has Holiday Tours, Inc., - this is on or before March 22, 1961 - been stopped from operating limousines or buses by officials of Virginia, Maryland and the District of Columbia? A. Never been stopped.

Q. When you went into business in 1957, what knowledge did you have of the formation of the Washington Metropolitan Area Transit regulation Compact? A. Never heard of it.

Q. From 1957 to March, 1961, and in 1961 you conducted your operations openly? A. Yes, sir.

Q. Have you ever attempted to conceal the type of operations?

A. No, sir.

Q. Have you ever attempted to disguise the type of operations you have described? A. No, sir.

Q. Have your operations been conducted with the intent to provide transportation service? A. Yes, sir.

MR. JASKIEWICZ: Mr. Examiner, I ask to have marked for identification at this time a six-page document, the first entitled "Atwood's Transport Lines, Inc.", dated August 3, 1960, with Reference No. 723.

MR. CUNNINGHAM: It may be marked for identification as Exhibit No. 7.

(The six-page document referred to, being a photocopy of six pages headed "Atwood's Transport Lines, Inc." and bearing the respective dates of August 3, 1960, August 5, 1960, August 9, 1960, August 10, 1960, August 17, 1960, and September 19, 1960, was marked for identification as Exhibit 7.)

BY MR. JASKIEWICZ:

Q. You have before you, Mr. Davis, what has been marked for identification as Exhibit No. 7, and I ask you to tell us, please, what this document consists of. A. These are invoices from Atwood's Transport Lines, where we leased buses from them for sightseeing purposes.

Q. And - A. It says "Nonlectured tour".

Q. Tell us what is the nonlectured tour, for example, referred to on the first page of Exhibit 7.

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MR. KAHN: I object. This document was prepared by Atwood, not by the witness. He will not be able to explain -

MR. JASKIEWICZ: He paid the -

MR. KAHN: - the use of the terminology.

I don't object to what he did, but he can't explain a document that was prepared by someone else, Mr. Examiner, and for that reason I object to the question.

MR. JASKIEWICZ: Well, if the Examiner please, the witness here is the one who paid the bill and the one who ordered the buses and contracted for it and is a direct party to it, and this invoice represents the understanding of the party as to the contract involved.

He certainly ought to be allowed to testify to it.

MR. KAHN: Well, let me make my objection clear.

I said, I objected to the witness explaining the term "Sightseeing charter - nonlecture tour" that appears on the document. He didn't prepare the document. He didn't use the words. These are the words of someone else other than the witness.

MR. JASKIEWICZ: Well, I repeat my answer to that, Mr. Examiner.

This is part of the contract. This represents the understanding of the parties as to the contract.

MR. SMITH: I would like to enter my objection,

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Mr. Examiner, for basically the same reason as Mr. Kahn's, but with one other modification in light of Mr. Jaskiewicz' statement.

This is not, in fact, a contract. It is what it purports to be. It is an invoice, as Mr. Davis stated in answer to counsel's question. It says nothing more than a vehicle was rented for the number of hours and the terms and how much the charges were. It speaks for itself. The intent behind or the meaning of the terms used by Atwood's are not legally explainable by Mr. Davis.

MR. JASKIEWICZ: Well, now, I never said this was a contract, Mr. Examiner. I think that ought to be straight right on the record.

MR. SMITH: I believe Mr. Reporter will read the answer back and —

MR. CUNNINGHAM: I am aware of what was said and what wasn't.

MR. SMITH: Thank you.

MR. CUNNINGHAM: I am inclined to sustain the objection, Mr. Jaskiewicz.

I feel if there is any explanation to be made as to what the words mean or purport to mean, that should be made or given or testified to by the person who made out this document.

MR. JASKIEWICZ: Well, then, Mr. Examiner, this

will be the time for my requesting the first subpoena, and that would be to subpoena the representative of Atwood's Transport Lines or the owner of Atwood's Transport Lines to be able to be brought here to testify as to the meanings of each and every word to the extent we care to examine him on the words.

It's certainly material to the issue in the proceeding as to what these documents are, and I would ask, therefore, that the Examiner issue a subpoena, and we will have served appropriately, on Atwood's Transport Lines, on the custodian of the records and the person preparing these documents.

MR. CUNNINGHAM: Do you have a name you would like me to issue the subpoena to?

MR. JASKIEWICZ: I don't have it now, but I will have it before the day is over.

MR. DAVIS: If I may, sir, with respect to this document and the other documents, I didn't want to interject myself into that dissertation, but for the purpose of the record I believe the record ought to show that nowhere does Exhibit 7 refer to a lease.

Now, Counsel and his witness —

MR. KAHN: Let's not argue that at this point.

MR. DAVIS: No. It is not my intent to argue the point.

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It is merely the reference to the instrument by counsel, and to me it is a misnomer as I can find nowhere in it does it appear.

MR. CUNNINGHAM: Well, perhaps that point should be better taken up on cross examination rather than on argument, Mr. Davis.

MR. DAVIS: Surely.

BY MR. JASKIEWICZ:

Q. Mr. Davis, with respect to Exhibit 7, your testimony previously was that you leased buses from Atwood's Transport in 1960 or you obtained buses or charted buses.

Now, when Atwood's made a bus available to you, what did you do with that bus? A. They furnished the driver and we placed our lecturer on there with their driver to teach him the pattern that we run, how we run our tours, which buildings we go to and what the time schedule was and everything. So, we furnished a man with his man, with his driver, until such a time that he was completely familiar with Holiday Tours' operation, and then at a later date, well, this driver and guide was on his own without one of our men being along with him.

Q. Did you have customers that rode these buses? A. Yes, sir.

Q. Did you sell tickets to those customers?

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A. Yes, sir.

Q. Did Atwood's sell any tickets? A. Yes, sir.

Q. And did they go out - A. Atwood's drivers did.

Q. Atwood's drivers did? A. Sell tickets; yes.

Q. And whose tickets were they? A. Holiday Tours' tickets.

Q. Now, Atwood's driver was driving the bus. What authority, if any, did he have to conduct his own tour or do what the customers told him? A. He had no authority.

He was given instructions before he ever left the office.

Q. And who gave the instructions? By "office" you mean what office? A. I did. Holiday Tours' office.

Q. You gave him instructions? A. Yes, sir.

Q. Have all these invoices been paid? A. Yes, sir.

Q. According to my count, this document, Exhibit 7, represents eight buses obtained in 1960 from Atwood's; is

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that correct? Would you check that figure, please? A. Yes. There's eight in this bunch.

MR. DAVIS: I only get six.

MR. JASKIEWICZ: There are three on one day.

There are three on one invoice.

Mr. Examiner, I ask to be marked for identification at this time a multi-page document, consisting of seventeen pages, entitled "Atwood's Transport Lines, Inc.", purporting to be invoices addressed to Mr. Walter P. Davis, Holiday Tours, the first date of which is April 4, 1961.

MR. CUNNINGHAM: This 17-page document may be marked for identification as Exhibit No. 8.

(The 17-page document referred to, being photocopies of 17 pages headed "Atwood's Transport Lines, Incorporated" and bearing the respective dates of April 4, 1961, May 27, 1961, June 6, 1961, June 10, 1961, June 17, 1961, July 1, 1961, July 3, 1961, July 8, 1961, July 13, 1961, July 15, 1961, July 23, 1961, July 29, 1961, August 8, 1961, August 12, 1961, August 19, 1961, August 26, 1961 and October 28, 1961, was marked

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for identification as Exhibit 8.)

MR. SMITH: This is No. 8?

MR. CUNNINGHAM: Eight.

BY MR. JASKIEWICZ:

Q. I refer you to Exhibit 8 for identification, Mr. Davis, and ask you to tell us what it is. A. These are invoices from -

MR. SMITH: Objection, Mr. Examiner.

The exhibit, on its face, indicates that a number of these invoices – in fact, all of them, as far as I can see – are for charters following March 22, 1961 and would not be relevant in this case.

MR. JASKIEWICZ: Well, the document hasn't been offered yet, Mr. Examiner.

MR. SMITH: It has been marked for identification, Mr. Jaskiewicz.

MR. JASKIEWICZ: Well, I can mark anything for identification, if the Examiner please.

Relevancy is something else.

I thought I made my position clear earlier, Mr. Examiner, as to the year 1961, as to the reason why we intended to offer certain evidence subsequent to March 22, 1961.

MR. CUNNINGHAM: Would you read that question back to me?

(The reporter read the question as follows: "I refer you to Exhibit 8 for identification. Mr. Davis, and ask you to tell us what it is.")

MR. CUNNINGHAM: I see nothing objectionable to that, Counsel.

MR. JASKIEWICZ: Answer the question, please.

THE WITNESS: These are invoices from Atwood's Transport Lines, where we leased buses for sightseeing purposes.

BY MR. JASKIEWICZ:

Q. When you leased these buses in 1961 for the dates indicated, what did you do with the buses?

MR. SMITH: I object, Mr. Examiner, at this time because now he's going further than his original question. He's indicated on the dates which the "lease" was made, and those dates, obviously, show that they are after March 22, 1961. For that reason, we object, in that they have no materiality, relevancy or competency in this Grandfather Application hearing.

MR. JASKIEWICZ: Well, my answer to that is what I indicated previously, Mr. Examiner.

MR. SMITH: May I add one further thing, Mr. Examiner, before you

rule: I respectfully submit that if the Examiner permits the introduction of evidence on

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applicant's case dealing with incidents and operations subsequent to March 22, 1961, it may be that the Examiner will be bound to admit the same type of evidence to counteract incidents that took place after March 22, 1961, in the cases to be put on by the protestants here.

MR. JASKIEWICZ: I think, Mr. Examiner, we will cross that bridge when we come to it.

I don't think the Examiner is bound by ruling.

MR. SMITH: He's not, but I'm merely indicating that is a consideration.

In other words, we feel that the door will be open for -

MR. CUNNINGHAM: I understand your position, Mr. Smith.

MR. DAVIS: May I be enlightened, Mr. Examiner, please?

Didn't you yesterday issue a ruling in the morning session, I believe, with respect to the introduction of evidence and testimony with respect to the period subsequent to March 22?

MR. CUNNINGHAM: I wouldn't say it was a ruling. I would say it was an observation as to how I would think the proceeding should be handled and emphasis placed.

Frankly, Mr. Jaskiewicz, I am of the opinion I should sustain the objection to this document.

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MR. JASKIEWICZ: Is that your ruling?

MR. CUNNINGHAM: Primarily because, as I say, the Commission, in these Grandfather proceedings, is primarily interested in what transpired on and before March 22, 1961.

Now, of course, what took place on March 23 might be very relevant, but as each day goes on we get to the point that a great deal could happen, -

MR. JASKIEWICZ: I understand.

MR. CUNNINGHAM: - and I feel the best way to draw the line is to draw the line on March 22.

MR. JASKIEWICZ: Very well.

MR. CUNNINGHAM: Now, I am not closing the door completely in this session to anything that transpired after that date, but as far as this type of material I am so inclined and so rule.

MR. JASKIEWICZ: Well, if the Examiner please, then, we should like to make an offer of proof.

The document has already been identified, and we will make an appropriate offer of the document at a later time. However, we would like to make this offer of proof: That if I were permitted to ask questions on this document Mr. Davis would testify that these documents represent invoices for buses which he obtained from Atwood's Transport Lines as of the dates indicated; that the operation

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of these buses was under the control of Holiday Tours, Inc., as indicated by his prior testimony concerning the year 1960; that he instructed the drivers as to the nature of the operation that they would conduct for Holiday Tours, Inc.; that the operations were those of Holiday Tours, Inc., during the periods indicated.

I have a four-page document, Mr. Examiner, which is what purports to be invoices from the Washington, Virginia and Maryland Coach Company directed to Holiday Tours, Inc., for periods indicated, specifically, from August '61 through October '61.

I ask that that be marked for identification.

MR. CUNNINGHAM: That may be marked for identification as Exhibit No. 9.

(The four-page document referred to, being photocopies of four pages headed "Washington, Virginia and Maryland Coach Company, Inc." and bearing the respective dates of September 4, 1961, September 21, 1961, October 3, 1961 and November 1, 1961, was marked for identification as Exhibit 9.)

MR. JASKIEWICZ: Did you mark this? Is this 9?

MR. CUNNINGHAM: Nine.

BY MR. JASKIEWICZ:

Q. Mr. Davis, I refer you to what has been marked for identification as Exhibit 9 and ask you to tell us what that document represents?

A. Invoices from Washington, Virginia and Maryland Coach Company where we leased buses from them for sightseeing purposes.

Q. And -

MR. DAVIS: At this point, sir, I will object for the reasons heretofore explained by Mr. Smith rather than clutter the record with the same argument.

It is to be noted that the buses herein referred to on Exhibit 9 refer to a period of time starting with September 4, 1961 and ending November 1, 1961, a period of time subsequent to March 22, 1961, and, therefore, we object to its being referred to as an exhibit for the purpose of testimony.

MR. JASKIEWICZ: Well, of course, our reply would be the same, Mr. Examiner, that these dates of operations in 1961 are material, and the further reason I think they are material, not only for W V & M, but for Atwood's, is based on the testimony of Mr. Davis that the sightseeing operation is a seasonal one, and to preclude documents such as this after March 22, 1961, is patently unfair.

MR. CUNNINGHAM: The objection is sustained.

MR. JASKIEWICZ: I should like to make an offer of proof -

MR. SMITH: Mr. Examiner, on the question of offer of proof, it is my understanding, subject to correction, of course, that the offer of proof is accepted if there is along with the offer an indication that it will be tied in or that there is some reason for its being made other

than merely to introduce into the record all that could not have been put in on the basis of your sustaining of his objection.

In other words, it takes more than merely stating an offer of proof is being made and then reading into the record everything that counsel wishes to have his witness testify to.

MR. JASKIEWICZ: Well —

MR. CUNNINGHAM: What more do you want out of him?

MR. SMITH: I suggest the offer of proof is not acceptable in light of the fact there is no statement by counsel that he intends, in any fashion, during this hearing to properly tie it in.

MR. JASKIEWICZ: Well, if counsel, Mr. Examiner, would withdraw their objections, we would tie everything right in very nicely, and I'm doing the only thing I know how to do in order to preserve the rights of this party,

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to make an offer of proof as to what he would testify to, so we can argue in my brief, petition and otherwise.

MR. CUNNINGHAM: Well, had the exhibits been permitted to come into evidence in this proceeding, would it have tied in with other testimony in the case?

MR. JASKIEWICZ: Well, I think it has already. I think it has. The witness has already testified as to the method of his operations.

We're trying to pinpoint some dates, some specific instances, when this equipment was obtained. I think it's already tied into the testimony, and there are some specific elements of certain other documents that will be specifically tied in, if permitted to go into evidence.

MR. CUNNINGHAM: Go ahead.

MR. JASKIEWICZ: I think we had —

MR. KAHN: You want to make an offer of proof?

MR. JASKIEWICZ: The objection was sustained, is that correct?

Mr. Examiner, I should like to make an offer of proof as to testimony or in addition to the document certain testimony which would have

been adduced through Mr. Davis, specifically that the buses represented on the invoices contained in Exhibit 9, buses obtained from W V & M Coach Company, Inc. by Holiday Tours, which they used in their operations, were under the direction and

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control of Holiday Tours, Inc.; the drivers of the buses provided by W V & M were under the control of Holiday Tours, Inc.

MR. KAHN: Is that [what] Mr. Davis would testify to if he were permitted to testify?

MR. JASKIEWICZ: That's the offer of proof; yes.

MR. KAHN: Well, I mean -

MR. JASKIEWICZ: Yes.

MR. KAHN: - those words aren't Mr. Davis' words. That's what you are using.

MR. JASKIEWICZ: No. These are my words.

MR. KAHN: Yes.

MR. JASKIEWICZ: We would have elicited this information, Mr. Examiner, from Mr. Davis through appropriate questions if the questions were permitted, but the substance would have been the same.

The next, Mr. Examiner, is a multi-page document -

I guess we better do it one at a time.

The next is an invoice - D. C. Transit Company - dated April 1961, made out to Holiday Tours, a single-sheet document.

MR. CUNNINGHAM: It may be marked for identification as Exhibit No. 10.

(The document referred to, being a photocopy of a document headed 'D.C.'

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"Transit System, Inc. Invoice", dated April 1961, was marked for identification as Exhibit 10.)

MR. JASKIEWICZ: The next, Mr. Examiner, is a single-sheet document - D. C. Transit System - April 16, 1961.

MR. CUNNINGHAM: It may be marked for identification as Exhibit No. 11.

(The document referred to, being a photocopy of a document headed "D.C. Transit System, Inc., Invoice", Dated April 16, 1961, was marked for identification as Exhibit 11.)

MR. SMITH: Are these going to be marked individually now?

MR. JASKIEWICZ: Yes. The next is a two-page document — D.C. Transit System, Inc. — May 31, 1961.

MR. CUNNINGHAM: It may be marked for identification as Exhibit No. 12.

(The two-page document referred to, being a photocopy of a document headed "D.C. Transit System, Inc." and dated May 31, 1961, was marked for identification as Exhibit No. 12.)

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MR. JASKIEWICZ: The next is a single-sheet document — June of '61 — D. C. Transit System, Inc.

MR. CUNNINGHAM: It may be marked for identification as Exhibit No. 13.

(The document referred to, being a photocopy of a document headed "D.C. Transit System, Inc." being undated and bearing the number 6072, was marked for identification as Exhibit 13.)

MR. JASKIEWICZ: The next — June 19, 1961 — single-sheet document — D.C. Transit System, Inc.

MR. CUNNINGHAM: It may be marked for identification as Exhibit No. 14.

(The document referred to, being a photocopy of a document headed "D.C. Transit System, Inc., Invoice" and dated June 19, 1961, was marked for identification as Exhibit 14.)

MR. JASKIEWICZ: The next — June 21, 1961.

MR. CUNNINGHAM: This may be marked for identification as Exhibit No. 15.

(The document referred to, being a photocopy of a document headed "D.C. Transit System, Inc., Invoice" and

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dated June 21, 1961, was marked for identification as Exhibit 15.)

MR. JASKIEWICZ: And the next — a single-sheet document dated June 12, 1961.

MR. CUNNINGHAM: It may be marked for identification as Exhibit No. 16.

(The document referred to, being a photocopy of a document headed "D.C. Transit System, Inc., Invoice", dated 7/12/61, was marked for identification as Exhibit 16.)

MR. JASKIEWICZ: The next - single-sheet document - D. C. Transit System, Inc. - dated July 21, 1961.

MR. CUNNINGHAM: It may be marked for identification as Exhibit No. 17.

(The document referred to, being a photocopy of a document headed "D.C. Transit System, Inc., Invoice", dated 7/21/61, was marked for identification as Exhibit No. 17.)

MR. JASKIEWICZ: The next - D. C. Transit System, Inc., - single-sheet document dated July 25, 1961.

MR. CUNNINGHAM: It may be marked for identification as Exhibit No. 18.

(The document referred to, being a

photocopy of a document headed "D.C. Transit System, Inc., Invoice", dated 7/25/61, was marked for identification as Exhibit 18.)

MR. JASKIEWICZ: The next is a multi-page document, Mr. Examiner, consisting of 11 pages, entitled "D. C. Transit System, Inc.", dated July 31, 1961, with several attachments to it.

MR. CUNNINGHAM: All right. This may be marked for identification as Exhibit No. 19.

(The document referred to, being a photocopy of a document headed "D.C. Transit System, Inc.", dated July 31, 1961, and having attached thereto photocopies of ten sheets headed "D.C. Transit System, Inc., Charter Service", was marked for identification as Exhibit 19.)

MR. JASKIEWICZ: The next is another multi-page document - D. C. Transit System, Inc., dated August 24, 1961, consisting of eight pages, the first page of which is dated August 24, 1961.

MR. CUNNINGHAM: It may be marked for identification as Exhibit No. 20.

(The document referred to, being a

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photocopy of a document headed "D.C. Transit System, Inc.", dated August 24, 1961, and having attached thereto seven pages headed "D.C. Transit System, Inc., Charter Service", was marked for identification as Exhibit 20.)

MR. JASKIEWICZ: The next is a three-page document entitled "D. C. Transit System, Inc.," dated August 31, 1961. I ask that be marked, Mr. Examiner.

MR. CUNNINGHAM: It may be marked for identification as Exhibit No. 21.

(The document referred to, being a photocopy of a document headed "D.C. Transit System, Inc.", dated August 31, 1961, and having attached thereto two sheets headed "D.C. Transit System, Inc., Charter Service", was marked for identification as Exhibit 21.)

MR. JASKIEWICZ: The next is a two-page document entitled "D. C. Transit System, Inc.", dated October 31, 1961.

MR. CUNNINGHAM: It may be marked for identification as Exhibit No. 22.

(The document referred to, being a

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photocopy of a document headed "D.C. Transit System, Inc.", dated October 31, 1961, and having attached thereto a document headed "D.C. Transit System, Inc., Charter Service", was marked for identification as Exhibit 22.)

BY MR. JASKIEWICZ:

Q. I show you, Mr. Davis, what has been marked for identification as Exhibits 10 through 22 and ask you to tell us what those documents are, please? A. These are invoices from D. C. Transit System where we leased buses for sightseeing purposes.

Q. And the buses you leased were for what purpose?

MR. SMITH: Objection, Mr. Examiner, for the same reason as hereinbefore stated.

Exhibits Nos. 10 through 22 are relating to invoices of D. C. Transit, I think in every instance and every occasion, for charter of buses subsequent to March 22, 1961, and for that reason I move that any further discussion as to the identified exhibits be disallowed.

MR. CUNNINGHAM: The objection is sustained.

MR. JASKIEWICZ: We should like to make an offer of proof as to testimony which would be adduced through Mr. Davis concerning the buses obtained from D. C. Transit System as represented in Exhibits 10 through 22,

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he would testify that the entries represent buses leased or obtained from D. C. Transit System on the dates indicated and used by Holiday Tours, Inc., in their sightseeing business during the periods indicated; that during the periods indicated the buses were under the control of Holiday Tours, Inc., and that the drivers provided by D. C. Transit, Inc., were instructed by Holiday Tours, Inc., as to the method of operation in conjunction with the Holiday Tours' service as sold to the various patrons.

In addition, Mr. Examiner, the witness would testify with respect to Exhibits 19 and 20 that those pages subsequent to the first page - the report time for the D. C. Transit bus coincides, in fact, with the schedule of Holiday Tours as previously testified to by Mr. Davis.

MR. CUNNINGHAM: All right.

Let's take a 15-minute recess.

(Thereupon, at 10:38 a.m., a 17-minute recess was taken.)

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MR. CUNNINGHAM: Off the record.

(Off the record.)

MR. CUNNINGHAM: Back on the record.

Mr. Jaskiewicz.

MR. JASKIEWICZ: Mr. Examiner, I would like to have marked for identification at this time a multi-page document consisting of six pages entitled "Holiday Tours Manifest", dated June 16, 1959.

MR. CUNNINGHAM: This may be marked for identification as Exhibit No. 23.

(The document referred to, being a photocopy of a six-page document entitled "Holiday Tours Manifest", dated June 16, 1959, was marked for identification as Exhibit No. 23.)

BY MR. JASKIEWICZ:

Q. I refer you, Mr. Davis, to what has been marked for identification as Exhibit No. 23 and ask you to tell us what it is. A. This is a daily manifest that we give the drivers and guides, showing the ticket number on the lefthand side, the name of the passengers they are to pick up; then the type of tour and the number of persons they are to pick up, and whether they are to collect or whether it has already been paid.

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Q. Were these documents prepared in the normal daily course of your business? A. Every day; yes, sir.

Q. And some of these were prepared personally by you? A. Yes, sir.

Q. Directing your attention to page 1 of Exhibit 23, the upper left-hand corner, beneath the words "Holiday Tours" appear to be the words "Al Bus", can you tell us what that is? A. That is Al, the driver.

Q. Al who? A. Al Beckelman; and bus, what type of equipment we used that day.

Q. June 16, 1959, from whom did you obtain a bus?

MR. KAHN: What is the name of the driver?

THE WITNESS: Beckelman.

MR. JASKIEWICZ: B-e-c-k-e-l-m-a-n.

THE WITNESS: In 1959 we got buses from the Suburban Transit Company.

MR. SMITH: That does not appear on the manifest under date of June 16, 1959, does it, Counsel?

MR. JASKIEWICZ: No; it doesn't.

BY MR. JASKIEWICZ:

Q. Under whose employ was Mr. Beckelman? A. Holiday Tours.

Q. In other words, you paid him? A. That's right.

Q. Was there any driver, anybody from Suburban Transit? A. Not that made - not that made the tour.

MR. KAHN: I don't understand the question, Mr. Examiner.

Is the testimony of the witness that Mr. Beckelman drove the vehicle under the date of June 16, or is he talking generally?

Yesterday in direct examination he indicated that his company had obtained buses from time to time from Suburban Transit, on some occasions a Mr. Beckelman drove the bus, but I am not clear whether his answer is about Exhibit 23.

MR. JASKIEWICZ: I thought I -

MR. KAHN: Does he indicate Mr. Beckelman drove this bus this particular date?

THE WITNESS: That's right.

MR. KAHN: Thank you very much.

MR. JASKIEWICZ: I thought, Mr. Examiner, I was trying to limit my questions to page 1 of Exhibit 23 in the first instance and -

MR. CUNNINGHAM: Well, let me ask you this question, Mr. Davis: I note in the lefthand corner it is Holiday Tours. Was that your partnership arrangement?

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THE WITNESS: Yes; it would be the partnership at that time.

MR. JASKIEWICZ: Would that be a partnership or as an individual?

THE WITNESS: That was an individual at that time because the partnership was out in '58. It was as an individual in June of '59. The partnership went out in '58.

BY MR. JASKIEWICZ:

Q. In other words, June 16, 1959, it was Walter Lee Davis doing business as Holiday Tours? A. That's correct.

Q. And I am sure this is in the record, but Walter Davis doing business as Holiday Tours was a predecessor organization to Holiday Tours, Inc.? A. Yes, sir.

Q. Now, directing your attention to page 2 of Exhibit 23, I believe that the information is similar to that described on page 1; is that correct? A. Yes, sir.

Q. In your upper lefthand corner under Holiday Tours would you tell us what that is? A. It says Al was the driver, which is Al Beckelman, and it says "Sub bus", which means Suburban bus.

Q. All right. Page 3, Holiday Tours, what is the circumstances

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as to the upper lefthand corner under "Holiday Tours"? A. Well, that is the first day we used a bus and Al drove the bus, and there is Jim was the driver. We drove a limousine to feed the customers to the bus.

Q. Page 4, which is June 26, 1959, what were the circumstances as to the equipment used on that particular day? A. It was a bus and Al was the driver on it.

Q. Now, would the same be true for the last two pages, dated June 7 and July 8, 1959? A. Yes, sir.

Q. And on the dates represented in Exhibit 23 for identification, the driver under all circumstances was Mr. Al Beckelman? A. Yes, sir.

Q. And he was under the employ of Holiday Tours? A. Yes, sir.

Q. Mr. Davis, Exhibit 23 has been identified as a photocopy of the original -

MR. DAVIS: I will object.

I have set here and watched counsel testify for the witness. I think it is time the witness is able to testify for himself by direct questions.

MR. SMITH: Not leading question.

MR. CUNNINGHAM: I think you should make an effort,

Mr. Jaskiewicz, to not ask leading questions.

BY MR. JASKIEWICZ:

Q. What documents do you have present in the hearing room from which the photocopies were made? A. The original manifests.

Q. And what have you to say as to whether they will be available to examination by counsel for W V & M, D. C. Transit and A B & W?

A. They are available.

Q. They will be available.

What have you to say whether these documents are representative of the manifests prepared by your company in 1959? A. They are identical.

Q. What have you to say, if anything, as to whether these are the only manifests prepared in 1959 by your company? A. No; there was one prepared every day.

Q. Just so we are clear, what have you to say as to whether there are other manifests for limousines? A. Yes, sir.

Q. Will you tell us about it? A. Well, we gave the limousine driver a separate manifest just like this, but each driver has his own manifest as to where he was to go and the people he was to pick

up, and if his limousine - well, the number of people. For instance, if it didn't say limousine, where there was just a few people, five or six or seven, we use a limousine. Where we had a group there we largely used a bus.

MR. SMITH: Point of information, Mr. Examiner, will counsel have available the manifests? Will he produce the manifests for the limousines?

MR. JASKIEWICZ: Well, I didn't - I have them if you want them. Does counsel want them? I will be happy to make them available.

MR. CUNNINGHAM: You don't want them right now?

MR. SMITH: They don't have to be right at this moment.

MR. JASKIEWICZ: We are trying not to burden the record, Mr. Examiner. We do have all the manifests for 1959, and I was trying to save a little expense for the applicant, but we can reproduce this stack of documents and get them into evidence if that is what the protestants desire.

MR. SMITH: I am not asking if they are to be put in evidence. I am asking if they will be made available for inspection.

MR. JASKIEWICZ: I guess I misunderstood counsel.

The next document I would like to have marked for identification is a single sheet document entitled "Holiday Tours Bus Manifest", August 5, 1960, single page, with writing on both sides of it.

MR. CUNNINGHAM: All right, this will be marked for identification as Exhibit No. 24.

(The document referred to, being a one-page document entitled "Holiday Tours Manifest", dated August 5, 1960, was marked for identification as Exhibit 24.)

MR. JASKIEWICZ: The next is a single-sheet document dated August 9, 1960, entitled "Holiday Tours Manifest". It is a single-sheet document with writing on both sides, Mr. Examiner.

MR. CUNNINGHAM: The document may be marked for identification as Exhibit No. 25.

(The document referred to, being a single-page document entitled "Holiday Tours Manifest", dated August 9, 1960, was marked for identification as Exhibit No. 25.)

MR. JASKIEWICZ: The next is a single-sheet document entitled "Manifest, Holiday Tours", dated August 8, 1960 — excuse me, August 10, 1960.

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MR. CUNNINGHAM: This may be marked for identification as Exhibit No. 26.

(The document referred to, being a one-page document entitled "Holiday Tours Manifest", dated August 10, 1960, was marked for identification as Exhibit 26.)

BY MR. JASKIEWICZ:

Q. I refer you, Mr. Davis, to what has been marked for identification as Exhibits 24, 25 and 26. Would you tell us what these documents are? **A.** These are documents — that is a manifest, the daily manifest that we made up that shows that we had a bus in that particular day, it was an Atwood bus, and we furnished our own guide with their driver and lecturer — I mean, our — pardon me — we furnished our lecturer and guide along with their driver on the bus, and he conducted the tour, told the driver where to go, what stops to make and how to distribute the people, the ones that weren't going on the all-day tour, and on the back side of this sheet is a notation made by our guide and lecturer as to the number of people and what he did with them and how he handled them getting them back to their respective pick-up places.

Q. And who was your guide, sir?

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A. Al Beckelman —

Q. Mr. Davis, — **A.** — and the driver for Atwood was Robey, Bill Robey, on this vehicle.

Q. Mr. Davis, I want to refer you to Exhibit 7 for identification in this proceeding, which is a series of invoices from Atwood, and I would like to direct your attention to two of them.

MR. SMITH: Mr. Examiner, before we get this may I project here?

It is my understanding that Counsel's questions were directed to Exhibits 24, 25 and 26, and the answers purported to be in response to those exhibits, and I don't see where the information is that Mr. Davis identified. I would like to know if it appears on these exhibits that Mr. Robey was the driver for Atwood Transit and Mr. Beckelman was the guide for Holiday Tours.

At this time I would like to see where it appears on the -

MR. CUNNINGHAM: Does it appear on the exhibits?

MR. JASKIEWICZ: Mr. Examiner, it does not appear on the exhibits. Mr. Davis is sponsoring the exhibits and he is testifying from his knowledge in connection with it.

MR. CUNNINGHAM: He seems to indicate it is on the exhibit.

MR. JASKIEWICZ: Well, -

THE WITNESS: I made the exhibit up myself. This is my writing. I wrote this manifest, and I know this writing on the back is Al Beckelman's writing. I know Bill Robey drove this bus, because at this time we were using Bill Robey altogether and we requested Bill Robey as the driver, and Al Beckelman broke Bill Robey in as the type of sightseeing trip that we run, not the kind he was accustomed to, but the type we ran, and that is the reason I put my man with him, so he would run the type tour we wanted run.

MR. SMITH: Let the record show that Mr. Davis is indicating categorically that Exhibits 24, 25 and 26 do not purport to, on their face, indicate what he has just testified to, but of his own recollection, having made them up, he recalls these were the facts, as opposed to their showing on the face.

MR. CUNNINGHAM: All right.

BY MR. JASKIEWICZ:

Q. I direct your attention now to page 2 of Exhibit 7 for identification.

MR. DAVIS: What exhibit are you referring to?

MR. CUNNINGHAM: Seven.

MR. JASKIEWICZ: Exhibit 7.

BY MR. JASKIEWICZ:

Q. I would like to ask you whether Atwood made available a bus to Holiday Tours on August 5, 1960, which coincides with your manifest?

A. Yes, sir; this is an Atwood invoice showing that Bill Robey was the driver on a nonlectured tour, which corresponds with the manifest, and the writing on the back shows my guide and lecturer handled the people and distributed them.

This man was only the driver.

Q. I refer you to page 3 of Exhibit 7 and if I asked you the same questions, would your answers be the same as to August 9? A. Yes, sir; Mr. Robey was the driver of the trip on a nonlecture basis, which corresponds with my manifest for 8/9/60, and I wrote the manifest myself, and here is Al Beckelman written on the back of the manifest, which also shows the distribution of the people.

Q. I refer you to page 4 of that Exhibit 7 for identification, and ask you if I asked you the same questions, would they coincide with Exhibit 26? A. Yes, sir. This is an invoice on the 10th of August, 1960, from Atwood Transport showing the driver to be Robey on a nonlectured bus, and it corresponds with my manifest for that day, and upon the back of my manifest

it says what distribution my guide and lecturer made of the people.

Q. With respect to Exhibits 24, 25 and 26, which appear to be photocopies, from what documents were these photocopies prepared? A. From my daily manifests.

Q. Are these originals available? A. Yes, sir.

Q. What have you to say, sir, whether these documents are prepared in the normal course of your business? A. Yes, sir; it is done daily.

MR. JASKIEWICZ: Mr. Examiner, I have a two-page document which I ask to have marked for identification. The first page is entitled "Holiday Tours Manifest", August 17, 1960.

MR. CUNNINGHAM: That may be marked for identification as Exhibit No. 27.

(The document referred to, being a one-page document entitled "Holiday Tours Manifest", dated August 17, 1960, was marked for identification as Exhibit No. 27.)

BY MR. JASKIEWICZ:

Q. Referring to Exhibit 27 for identification, Mr. Davis, I ask you to tell us what that document is, please.

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A. It is a daily manifest. It is prepared in the office each day to show the number of people and the driver and where they are to be picked up.

Q. What dates, sir, does this document cover? A. August 16 and August 17, 1960.

Q. Now, I refer you to Exhibit 7, again, and specifically page 5 of that document, and ask you what information is contained on that page that is pertinent to Exhibit 27? A. Well, on August 17 we - there are bills for August - on August 15 one, August 16 one, and one on August 17, for three separate buses from Atwood Transport, which had lecturers - which were lectured sightseeing buses. After we had trained Mr. Robey, then we turned Mr. Robey to operate the tour on his own, after he had learned our pattern and knew the stops we made and the schedule we ran.

So Mr. Robey was on his own as a guide and lecturer and driver at this time.

Q. What connection, if any, is there between Exhibit 27 and page 5 of Exhibit 7? A. Well, it shows the dates that we had buses from Atwood, at that particular time, to correspond with our manifests.

Q. Were these manifests prepared in the daily course

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of your business? A. Yes, sir.

Q. These documents appearing to be photocopies in Exhibit 27, what can you tell us as to what they were prepared from? A. They were prepared from our daily manifests that we made up in the office for the drivers every morning before they depart.

Q. Are these documents available? A. Yes, sir.

MR. JASKIEWICZ: Mr. Examiner, I would like to have marked for identification a multi-page document entitled "Holiday Tours Manifest", March 8, 1961, consisting of 18 pages.

MR. CUNNINGHAM: This may be marked for identification as Exhibit No. 28.

MR. JASKIEWICZ: Mr. Examiner, in order to avoid any objection, I will point out at this particular time that the first two pages of that document are for manifests prior to March 22, 1961, and I would direct a series of questions to Mr. Davis concerning these first two pages, and I assume I will get an objection to the subsequent pages, and I assume I will make an offer of proof.

Maybe I can break it down this way and get it

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into the record without too much confusion.

MR. CUNNINGHAM: Was there any reason, Mr. Jaskiewicz, that this exhibit was prepared in this manner to be one document consisting of the pages that it does?

MR. JASKIEWICZ: No, Mr. Examiner. The only pattern is that it is all in 1961.

I have no objection to making the first two pages a separate exhibit, if the Examiner feels that would be helpful, but it says - the Examiner suggested before you get into the question of closeness, the third page being marked March 24, 1961, and so forth, but I certainly have no

objection to marking the first two pages as Exhibit 28 and then identifying the subsequent pages as Exhibit 29, if the Examiner feels that would be more convenient.

MR. CUNNINGHAM: I think it might be better procedure to handle it that way, Mr. Jaskiewicz.

MR. JASKIEWICZ: Off the record.

(Off the record.)

MR. CUNNINGHAM: Back on the record.

Let the record show that the document identified as Exhibit No. 28 is a two-page document consisting of two pages, first page dated 3/8/61, and the second page 3/21/61.

(The document referred to, being a two-page document entitled "Holiday

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Tours Manifest", dated 3/8/61 and 3/21/61, was marked for identification as Exhibit No. 28.)

(The document being referred to, being a 14-page document entitled "Holiday Tours Manifest", the first page bearing the date 3/24/61, was marked for identification as Exhibit 29.)

BY MR. JASKIEWICZ:

Q. Mr. Davis, I would like to direct your attention to what has been marked for identification as Exhibit 28, and ask you to tell us what that is.

A. That is a manifest. It is prepared in our office for the driver, showing the number of people and the type of equipment.

There is no equipment there. Frank is a limousine driver, so, consequently, I know that is a limousine, plus the small number of people. See, there is only six persons there.

Then, on the next one, page 2, it is marked "Limo". So, that group was handled by a limousine rather than a bus.

Q. Were these documents prepared in the normal course of your business, sir?

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A. Yes, sir.

Q. Are the originals available? A. Yes, sir.

Q. I refer you to what has been marked for identification as Exhibit No. 29, and would you tell us what it is? A. This is a manifest that is made up in the office daily for the driver, and this driver drives only limousines, he is not a bus driver, so that I know that is a limousine operation that day.

MR. SMITH: Mr. Examiner, we object to any testimony concerning any of the material or part of Exhibit No. 29, for the reasons stated earlier, they purport to be subsequent to March 22, 1961, and I ask that they be stricken.

MR. CUNNINGHAM: The objection is sustained.

MR. JASKIEWICZ: Mr. Examiner, then I make an offer of proof as to the testimony of Mr. Davis, based on Exhibit 29 for identification, namely, that these documents represent manifests prepared in the daily course of his business and are representative for the year 1961, showing both limousine and bus service provided by Holiday Tours in 1961.

BY MR. JASKIEWICZ:

Q. Mr. Davis, what can you tell us as to your procedures since 1957 as to the preparation of manifests on a daily basis? A. It is done on a daily basis; yes, sir.

Q. And do you have the records available, the manifest

records available for the years 1959, 1960 and '61? A. Yes, sir.

Q. If the Commission prefers in their investigation to go over these documents in conjunction with their determination of this case, will you make them available to the Commission? A. Yes, sir.

* * * * *

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CROSS EXAMINATION

BY MR. KAHN:

Q. Mr. Davis, did Walter Lee Davis as an individual hold any authority from the Interstate Commerce Commission authorizing the transportation of persons by motor vehicle between any points in the Washington metropolitan district? A. No, sir.

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Q. Did Walter Lee Davis and your partner, whose name I am not quite clear on, hold any authority from the Interstate Commerce Commission? A. No, sir.

Q. Did Holiday Tours, Inc., the applicant before this Commission, hold any authority from the Interstate Commerce Commission? A. No, sir.

Q. Did any of the entities which I have now identified, namely, you as an individual, you and your partner as a partnership operation, or the applicant in this proceeding, hold any operating authority from the Commonwealth of Virginia? A. No; we didn't have any operating authority.

Q. Did you or your partnership or the applicant in this proceeding hold any operating authority from the Public Service Commission of the State of Maryland? A. Not except that the licenses used - I mean, they sold us licenses for hire vehicles.

Q. Well, I didn't ask you about the license tags. I will ask you about that in a moment.

My question is: Did you hold any certificate or operating document from the Public Service Commission of the State of Maryland? A. No, sir.

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Q. Did you or the partnership or the corporation hold any certificate or order from the Public Utilities Commission of the District of Columbia authorizing any services within the District of Columbia?

MR. JASKIEWICZ: I am going to object to that, Mr. Examiner, unless Counsel establishes by preliminary questions or by indication that such a certificate is required. I think it is an unfair question, unless that is established.

MR. CUNNINGHAM: I think that is a point that can be cleared up either on further questioning or cross examination, Mr. Jaskiewicz.

Objection overruled.

BY MR. KAHN:

Q. Did you understand the question, Mr. Davis?

Did you have any operating authority issued by the Public Utilities Commission of the District of Columbia? A. We had the Public Utilities certificate, yes, sir.

Q. Do you have a copy of it here, sir? A. In the - it is in the record.

Q. Are you referring to Exhibits 2, 3 and 4? A. Yes, sir.

Q. These are the only documents that you have received from the Public Utilities Commission? A. Yes, sir.

* * * *

Q. Let's assume that you had three across the back seat and three on the jump seats and two on the front seat, that is the number which requires a C-type of license, isn't

that true? A. You would have to have a C if you are going to haul eight or more.

Q. Eight or more? A. Eight or more.

Q. That's right.

So, if you intend to transport eight people in that Cadillac, you would have to buy a C license? A. That is correct.

Q. And I assume, then, that all of the licenses shown on Exhibit No. 4 under Paragraph C were obtained so you could carry eight people

or more in the Cadillac; isn't that true? A. That is true.

Q. As of March 22, 1961, did Holiday Tours, Inc., own any motor bus equipment? A. March 22?

Q. Nineteen-sixty-one. A. No, sir; they didn't own any buses.

Q. Did Holiday Tours, Inc., or the partnership which has been identified, or you, yourself, as an individual, own any motor bus equipment between, for example, 1957 and March 22, 1961? A. We didn't operate it as such, but we had a bus that was available to us through Mr. Wackerman, who was a

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member of the corporation, that he had his repossession, but we never did — we owned it as such, but we never did license it or operate it.

Q. Well, what do you mean, you owned it? Who owned it? A. Mr. Wackerman turned it over to the corporation. He was Vice President, and he had repossession.

Q. When did he turn it over to the corporation? A. In '59 and we found —

Q. Well, — excuse me, sir. A. — we found it more practical to lease buses than to license our own.

Q. Well, was the bus ever used by Holiday Tours, Inc., the applicant? A. No, sir.

Q. Never was? A. No, sir.

Q. Now, you indicated on direct examination that you had between 15 and 20 employees during the year 1961. Do you remember that, sir? A. That's right.

Q. I refer you to Exhibit No. 2, identifying the business you were in in the matter of Holiday Tours, Inc., for this Commission, Application No. 151, Docket No. 11, in which you introduced through Exhibit 2 an operating statement of Holiday Tours, Inc., from January 1, 1961,

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through September 31, 1961, in which the terminology "wages" of \$3,903 is shown, and I am showing you a copy of that Exhibit No. 2, Mr. Davis. Do you remember that? A. Yes, sir.

Q. Now, at the top of the exhibit there is something called "commissions and guides, \$93,000"? A. Yes, sir.

Q. Now, these so-called 15 to 20 people, were they commission representatives or were they employees? A. They were guides and they went — the guides weren't on commission, except for additional tours that they sold on the operation.

Q. Where were the wages for the 15 to 20 people? A. In the guides, in that \$93,000 figure up there.

The guides get 25, 30 dollars a day, so it runs up kind of rapid; and the buses are also figured in that figure, I believe.

Q. Well, is it your statement that the 15 to 20 people were guides? A. Not altogether, no.

Q. Well, will you mark down the categories of the periods between January 1 and March 22, 1961, to the best of your recollection?

How many people did you have, firstly, that were employees, if any?

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A. Well, let's see, we had one at the Holiday, we had two at the Fairfax, we had two at the office, which is five, and then we had the bookkeeper, would be six, and we had, I think, — officers were in a different category, they weren't in that category.

Q. Six people? A. That is six people that I can think offhand, and then we had the guides, we had —

Q. Well, is a guide an employee, sir, Mr. Davis? A. Yes, sir; he was an employee to the extent I tell him where he goes, what time he is going, what route he is going.

He is an independent operator, but I direct him where to go.

Q. Now, let me ask you, so we will get it straight, was the guide guaranteed a fixed amount of compensation per week or per month?

A. By the contract. If he contracted to work a half a day he got so much money. If he worked three-quarters of a day through WSCA, we knocked him off then. If he worked all day he got another wage.

So, he wasn't - none of them - on any weekly basis as such.

Q. You paid them when you needed them? A. At the end of the day.

* * * *

Q. * * * The question is, Mr. Davis: Do you have any records here to affirm your oral statement to the Examiner that you had employees between the period of January 1 and March 22, 1961? A. No; I didn't bring any records of that type with me. I didn't know there was any doubt that we had employees.

Q. Do you have a copy of your insurance policy that you made reference to? A. No, sir.

Q. Do you recall whether it was written on a gross receipts basis or on a per-vehicle basis? A. I don't know.

Q. All right. Do you have the policy of insurance? A. I just called the insurance agent and got it from him.

Q. You got the number? A. Yes; I got the number.

Q. You had to insure vehicle in the District of Columbia before you could get a license tag; isn't that true? A. That is absolutely true.

Q. Yes. Now, - A. All State.

Q. - the insurance policy didn't include any motor buses,

did it? A. No, sir.

Q. It did not? A. No, sir.

Q. In fact, none of the vehicles that you chartered from any of the carriers you identified were insured by Holiday Tours?

MR. JASKIEWICZ: I wonder if I could have that question read back.

(The reporter read the question as follows: "In fact, none of the vehicles that you chartered from any of the carriers you identified were insured by Holiday Tours?")

BY MR. KAHN:

Q. Inc.; isn't that true? A. That is true.

Q. Yes, sir.

Now, when you tell the Examiner that you directed the destination or the stops for these chartered vehicles, isn't it true, Mr. Davis, that when you charter a bus from the carrier that the person chartering the vehicle exercises that particular right, namely, you tell the company where to send the bus and where to go with the bus; isn't that true?

MR. JASKIEWICZ: I am going to object, Mr. Examiner,

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unless I understand the question is limited to exactly what Holiday Tours and not with respect to any person.

MR. KAHN: Yes, sir.

MR. JASKIEWICZ: I don't —

MR. KAHN: I will just say what Holiday Tours does.

BY MR. KAHN:

Q. Isn't it true, when you chartered the bus from Atwood, for example, you told Atwood where to send the bus; isn't that true? A. Yes, sir.

Q. And when the bus came to the particular location you then told the driver where you wanted that bus to go; isn't that true? A. True.

Q. What you did, Mr. Davis, was that you assembled a large group of persons, then you chartered a vehicle to transport them; isn't that true? A. I didn't assemble them. They were along the route.

Q. Well, — A. They weren't assembled any one place.

Q. What you did, you just told us in so many words on direct examination, is that you assembled the people, for example, at the Bureau of Engraving and Printing; don't you remember that? Don't you remember that statement? A. Certainly.

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Q. Yes. A. But that is where they [were] coming from a different direction.

Q. Well, - A. One bus wouldn't go in two or three different directions.

Q. The bus picked up the people that were intermediate, for example, from Wisconsin Avenue to downtown Washington; isn't that true?

A. That's right.

Q. Then you used one of your limousines, or two of [your] limousines, or maybe more, to pick people up from some other point and you brought them to one central base? A. Or another bus.

Q. Or another bus? A. Yes, sir.

Q. In other words, you consolidated or assembled people, then you chartered a bus to provide the transportation?

MR. JASKIEWICZ: I object to that.

THE WITNESS: No; we chartered a bus prior to assembling the people.

MR. CUNNINGHAM: Just a moment. There is an objection.

MR. JASKIEWICZ: I withdraw it.

BY MR. KAHN:-

Q. Now, then, you know, Mr. Davis, before you called the

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bus company that you had already sold a sufficient number of tickets to permit you to economically use a bus; isn't that true? A. Certainly.

Q. And then used a pre-arranged itinerary or pre-arranged tour already conceived at the time you chartered the bus; - A. That's right.

Q. - isn't that true?

Now, in every instance - and I will get to Suburban Transit Company - in every instance other than Suburban Transit you have stated that the driver of the vehicle was an employee of the bus company; isn't that true? A. If he drove - when he - when they were driving a bus; yes.

* * * * *

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Q. Let me clearly get on the record, in every instance, and this does not include Suburban Transit which we will deal with separately, the operator of the vehicle was an employee of the owner of the vehicle?

A. Yes, sir.

Q. That's right. Now, in addition to the driver you or the organization which you then represented, whether it was a partnership or the individual or the corporation, placed another person on as a so-called lecturer or a guide, in some instances? A. Yes, sir.

Q. Yes. And the purpose of that guide was to point out points of interest along the route; isn't that true?

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A. That's right; and train their driver to our pattern that we run for the sightseeing tour, so he could drive the tour and lecture it himself without our having to put another extra man on with him.

Q. In other words, your lecturer did not instruct the operator how to operate the vehicle. He explained to the driver what you would like for the lecturer or driver to tell the members of your group; is that about it? A. Well, he told - he told him where to go to pick these people up, because he was already a guide, he just didn't know the pattern, in which building we would go to first and which one we would go to next.

Q. Now, actually, when the driver performed the lecturing service, his employer received a greater amount of money from you, didn't he? A. At the beginning he didn't, but later they started putting lecturer fees on and in 1960 they didn't, but in '61 after the critical date they did put it on; prior to that I don't believe they did.

* * * *

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Q. Now, let's go over into the State of Virginia. You claim that you had an office in the State of Virginia; is that true? A. Still have.

Q. When was that office established? A. 1960.

Q. When in 1960? A. June, I believe - June or July - in June, I believe, 1960; and in 1959 we had a trailer down at the information place in Woodbridge where we operated.

Q. Woodbridge is approximately 22 miles south of the District on U. S. Highway 1? A. That's right.

Q. And it is not either in Arlington or Fairfax Counties; is that true? A. That is true.

Q. It is not? A. It is not.

Q. Now, is there any document in the hearing room, either attached to the application or in your possession, which would show that you had an office in the State of Virginia prior to March 22, 1961?

* * * *

A. No, sir; I mean, it doesn't.

* * * *

Q. When was this folder, the one I am asking questions about, prepared, if you know? A. I don't know.

Q. Have you any records here to indicate that any tours departed daily from the Holiday Inn in Arlington, Virginia, during any part of 1961 between January 1 and March 22, 1961? A. I can look and see -

Q. All right, you can look. A. - if they are in the manifests.

Q. All right. A. If they are on the manifest I can produce -

Q. Let me ask you another question while your counsel is getting some manifests.

Did any of the buses which you chartered originate tours at the Holiday Inn in Arlington?

Can you answer that last question before you go back to the manifests? A. Did they originate tours in Arlington?

Q. That's right.

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A. Yes, sir.

Q. All right, have you any evidence of that? A. Here is a manifest that shows tours originating at the Holiday.

Right there, "HD" is Holiday Inn. That originated at the Holiday Inn over there on 3-21-61.

Q. Now, the question was: What type of vehicle was used to transport those passengers on the tour that you sold to them? A. This particular one?

Q. Yes. A. A limousine was used on this.

Q. Now, have you any document here, manifest or otherwise, that would indicate that you operated any buses from Holiday Inn in Arlington, Virginia, during the period January 1 - March 22, 1961? A. The months of January, February and March we ordinarily don't use buses.

MR. CUNNINGHAM: Mr. Davis, answer the question. If it needs a clarification -

THE WITNESS: No; no.

BY MR. KAHN:

Q. Do you have any records here to show any bus trips originating at Holiday Inn during the year 1960 from Shirley Highway and Glebe Road?

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A. Yes, sir.

Q. Will you show me, sir? A. There is one right here, 8/3/60, bus.

Q. All right.

Now, you have shown me a piece of paper that says "Holiday Tours Bus Manifest" under date of 8/3/60; is that correct? A. Right.

Q. Now, will you tell me where on this manifest it shows the place at which the bus originated the trips that are shown on there? A. In this left column right there.

These were originated at the office "OF", office.

The next group "FF", Fairfax Hotel.

This group originated at the Holiday Inn, is the only Holiday Inn on there, and this other is Fairfax.

This column will tell the driver where to pick them up.

Q. Well, what you have shown me is a manifest that I briefly described for the record, and in the first column under the word "Number", "No.", similar to Exhibit 15, in the same column that is headed "Number" on Exhibit 15, on the document you show me there is written in "OFF" in several instances, "FF" in several instances, "HD" in several instances; is that correct?

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A. That is correct.

Q. Now, "Off" is the office on Wisconsin Avenue in Bethesda?

A. Yes, sir.

Q. "FF" is the office in - A. Fairfax.

Q. And "HD" is Holiday Inn in Arlington? A. Right.

Q. Where does that document indicate -

I would like to correct a statement for the record, Mr. Examiner.

When I referred to Exhibit 15, it should have been Exhibit 25.

MR. CUNNINGHAM: All right.

MR. KAHN: Thank you, Mr. Jaskiewicz.

BY MR. KAHN:

Q. Where does the document, the manifest, indicate that the bus went into Virginia and picked up those two people or three people at the Holiday Inn? A. This is a bus manifest that we used. The bus went to the Holiday Inn and we had 11 people - picked up 11 people that day.

Q. Where does that show that they were picked up there? A. Right here.

Q. Well, what you are pointing to is the initials "HD", isn't that true?

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A. Yes, sir.

Q. Now, isn't it true that the pattern and operation that you describe

was that people were picked up by limousine at certain locations and brought to a central point? A. That happens, too.

Q. Now, what is there on this manifest to inform this Commission or myself that this particular bus actually went over into Arlington and picked up those particular people? A. It is headed up here -

Q. "Bus"? A. Yes, sir.

Q. Then, your statement is that this one bus made this particular circuit? A. That's correct.

Q. And other than your statement, there is nothing on the manifest to show that? A. I wrote the manifest.

Q. Well, I appreciate that you wrote the manifest, but there isn't anything on the manifest to show that? A. Well, certainly it shows where the bus goes, shows it was a bus that went, and shows where the bus went.

Q. Well, if that is your explanation, sir, then the bus only went from the office to the Fairfax Hotel to Holiday Inn? A. That's right. He had a bus load then.

* * * * *

Q. Doesn't that manifest show "nine-ninety, Boat 5"? A. That is \$9.90 fee on the boat.

That would be the boat fee, I imagine.

Q. That you paid the passengers on the boat? A. Yes, sir; the fee.

Q. How do you know this bus went to Mount Vernon; or isn't it true it took them to the Wilson dock and put them on the steamer?

A. He put them on the steamer, then he deadheaded down to Mount Vernon and picked them up.

We can't leave them down at Mount Vernon.

Q. Then, you didn't carry any passengers to Mount Vernon? You went down deadhead and, allegedly, picked them up? A. Probably did.

Q. Now, where does that show on that manifest? A. It doesn't

show, but you can't always tell whether they are going down by boat, or they maybe ran down later and missed the boat when the boat leaves.

Q. Does the manifest show that you returned any passengers to Holiday Inn in Arlington at the conclusion of this trip? A. Yes; it is automatic. When we pick up a customer we always return them back to the place we picked them up.

Q. Who drove this particular bus? A. I could look at the invoice.

Q. It doesn't appear on the manifest?

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A. It doesn't appear who drove it; no, sir.

* * * *

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Q. In your mind. A. Yes, sir.

So, on the ninth when we had 41-passenger bus, on the 9th of August -

Q. Is that the ninth of August? A. He had a 41-passenger bus.

Q. And you put 48 passengers - A. I am not sure what we put. We had 48 passengers, but we had two more limousines right on there. So, if we needed help, we could send a limousine over to help with the overflow.

Q. Just a moment, not so fast, Mr. Davis, so we can get some questions in to get this record developed.

Is it your contention that on August 9, 1960, in accordance with page 3 of Exhibit 7, that the Atwood 41-passenger bus was the bus that originated a group of people at Holiday Inn in Arlington, Virginia, in accordance with the manifest that you have shown me? A. Yes - wait now, let me make a correction here.

I see that it says only 44 down here in the corner of the manifest. I counted 48. Let me recount it.

Q. There is 48 on it. A. Looks like 48 down here, but down here they got 44.

Q. You made the manifest out, didn't you? A. Yes; but they picked up some people along the way,

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maybe, had some extra sales.

* * * *

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Q. And there isn't any departure time, nor return time for this alleged movement, is there?

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A. Yes; it doesn't appear on there, but he has his instructions where to go.

Q. Do you have any other document in the hearing room which purports to show the origination of any person in Arlington County, other than Holiday Inn?

Now, it may take you some time.

I am going to ask you next about the City of Alexandria, then I am going to ask you about Fairfax County. So, if you run across separate -

A. There is one Key Bridge and Marriott, Key Bridge at Marriott.

Q. This document that you have handed me under date of September 2, 1960, where you said the space was for the identification of the vehicle, you have put somebody's name in there. Whose name is in there?

A. Green. He is a guide.

Q. He is a guide? A. Yes, sir.

Q. That certainly wouldn't describe a vehicle? A. Well, whatever you wanted. I just happened to use it for the man's name there. I could have very well put a vehicle in there.

Q. What did he drive that day? A. A limousine.

Q. I'm sorry?

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MR. CUNNINGHAM: Give him a chance to answer.

MR. KAHN: I'm sorry, sir.

BY MR. KAHN:

Q. This day you contend he drove a limousine? A. That is right.

Q. Where does that appear? A. That man doesn't drive anything but a limousine.

Q. Does this appear on this so-called vehicle manifest that that vehicle was operated? A. To me it does.

Q. I say, does it appear? A. To me it does. Seven people.

Q. Will you indicate to me where the word "limousine" appears, either written out or abbreviated on this form? A. Not on there, not on there.

That is all the man can drive, is a limousine.

Q. You mean he can't drive anything but a limousine?

Doesn't he have a driver's license? A. Yes; but he doesn't know how to drive a bus.

Q. Oh, I see.

Now, the word you referred to is Marriott; isn't that true? A. And "KB", that is Key Bridge Marriott.

Q. Key Bridge Marriott? A. And there is Twin Bridge Marriott. So, that K means

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Key Bridge.

Q. Now, do you have any other documents to show any origination in Arlington County?

MR. JASKIEWICZ: Mr. Examiner, might I suggest that before Mr. Kahn goes into this line of questioning that it might be well to take a recess to go through these and go -

MR. KAHN: I think that is a good suggestion.

I would ask him then, the next question, about the City of Alexandria and, thirdly, about Fairfax County.

MR. JASKIEWICZ: Anything in Virginia, in other words.

* * * * *

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Q. All right. A. "PS" is Presidential Gardens still.

Q. The document that you have handed me is a manifest of Holiday Tours. There is no bus or limousine designation under the term "Holiday Tours", like in Exhibit 25.

There is a word "Al", "A-1". Who was Al? A. Al Beckelman.

Q. Mr. Beckelman is seated here in the hearing room, isn't he?

A. Yes, sir.

Q. All right.

Is it your contention that Mr. Beckelman on July 24, 1959, operated a motor bus from Presidential Gardens? A. It is.

Q. It is.

And would you tell me whose bus he operated on that particular day?

A. Well, during that time we were using Suburban buses.

Q. Is there anything on this manifest to indicate that this was a bus?

A. The number of people.

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Q. The number of people? A. See.

Q. It shows 14; correct? A. Fourteen?

Q. Yes. A. Yes; 14 people.

Q. Was he driving a Suburban Transit bus on that date? A. Yes; because, see, there is only one man appears on the 24th, and one man couldn't -

Q. And Mr. Beckelman is in the hearing room? A. That's right.

Q. And it is your testimony he did it? A. That's right.

Q. What did you pay the Suburban Transit Company for the use of the bus? A. That depends on - it seems to me it was \$6 an hour, or six-fifty an hour, something like that.

Q. With whom did you negotiate these arrangements? A. Original arrangement was started with Mr. Dickson, and it was Mr. Cunningham that came to the place a few times.

Q. Now, Mr. Davis, I happen to know about Suburban Transit and Mr. Dickson, and I just don't want to take you by surprise. Mr. Dickson was never connected with Suburban Transit Company.

Now, is it your testimony that you dealt with

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Suburban Transit Company? A. I think he called it Suburban Transit Company, Suburban something.

Q. Well, now, let's have any documents.

Have you any documents here, in the same way that you brought in his exhibit, such as Exhibit 8, where Atwood Transport Lines submitted you an invoice? Have you any documents from Suburban Company showing the chartering of vehicles to you? A. Not as such, as invoices, receipts. We paid them cash every day, and where they billed us after the man - we didn't know how much time that Atwood man would have in, because he didn't always report back to the office, he returned to his warehouse, so they just billed us; whereas this man would pick up this bus every night and keep it overnight, and when he came back to the office he would pick up his cab, whatever he came out in, and they would pick up the bus.

Q. I am asking you now, do you have any documents, either checks payable to this so-called Suburban organization, now, or any type of written piece of paper that would identify the so-called company that made this bus available to you? A. I don't have any invoice like that. I don't have any checks with me. It may have been they were paid, sometimes, by check if they didn't have the cash there.

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They were paid daily.

Q. Now, let's go back to the name of the carrier.

Is it your contention that this Suburban Transit Company chartered these buses to you?

MR. JASKIEWICZ: Mr. Examiner, I am going to object, unless Counsel explains to the witness what he means by "charter". I think Mr. Davis has indicated the buses were made available to him and he used them.

BY MR. KAHN:

Q. All right, I will withdraw the question and ask you this: Is it your contention the Suburban Transit Company made buses available to you? A. I am positive Suburban Transit Company — yes; it was Suburban Transit, because I made the contact through a downtown office.

Q. Where did this so-called suburban company operate, if you know? A. In Maryland, as far as I know, and they went to the race track, and they picked up — they picked up at a Gulf Station up above my office, and then they wanted to pick up beyond my office and pay me 10 per cent on the tickets that I sold for the race track, and we started to get an application for a brokerage license, and it just never did materialize.

They picked up at the Gulf Station on Wisconsin Avenue, just above my place of business, for the race track.

Q. You dealt with a Mr. Dixon? A. Mr. Dixon; yes, sir.

Q. Now, Mr. Davis — A. And Mr. Cunningham.

Mr. Dixon was one of them, and there was another fellow named Cunningham.

Q. Mr. Davis, there was connected with this company a fellow called Dixon, connected with Federal Coach Lines, that ran down to Benedict, Maryland. A. Yes. That was it.

They had a downtown office under that name.

I was looking for the yellow pages.

Q. But that company wasn't known as Suburban Transit Company?

A. Yes.

Well, he was the man, and I don't know whether —

MR. JASKIEWICZ: Wait a minute. There is no question. That is just a comment by counsel.

BY MR. KAHN:

Q. Well, what company did you deal with? Federal Coach Lines?

A. I dealt with Mr. Dixon.

Q. Well, what was the name of his company? A. I thought it was Suburban.

Q. Do you know? A. I thought I did.

Q. Now, going back to this manifest that Mr. Beckelman will be interrogated upon, on July 24th, 1959, would you tell us the type of bus that was operated by Mr. Beckelman on that day?

MR. SMITH: Excuse me, counsel.

Was that July or April?

MR. KAHN: July 24th, 1959.

MR. SMITH: Excuse me.

THE WITNESS: Well, the only buses we ever got from them were not air-conditioned buses, and they were, I believe, 29 and 31 passengers; something like that.

BY MR. KAHN:

Q. What make were they? A. I don't remember.

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Q. You don't remember the make? A. No, sir.

Q. Do you know the year? A. I have no idea.

Q. You don't have any idea? A. It was very old, though.

Q. Very old buses? A. Yes, sir.

Q. And where were the buses garaged?

MR. JASKIEWICZ: I'm going to object, Mr. Examiner.

This is immaterial, where the buses were garaged.

MR. KAHN: I am testing the credibility of the witness.

MR. JASKIEWICZ: Well -

MR. KAHN: I'll tell the Examiner, in my opinion, this transaction didn't occur.

MR. JASKIEWICZ: Well, even so, Mr. Examiner, it is immaterial, and to test the credibility of the witness as to where the buses were stationed is completely irrelevant and immaterial and no basis to test the credibility of the witness -

MR. KAHN: Well, I -

MR. JASKIEWICZ: - as to where the lessor put the buses.

BY MR. KAHN:

Q. I want to know where the bus came from in the morning when it came out to your place of business.

MR. CUNNINGHAM: Just a moment, Mr. Kahn.

MR. KAHN: Yes, sir.

MR. CUNNINGHAM: I am going to overrule your objection at this time.

MR. KAHN: Mr. Davis -

THE WITNESS: Well, they were -

MR. JASKIEWICZ: Wait a minute.

I object to this next question.

I say where the buses came from in the morning -

MR. CUNNINGHAM: There hasn't been a question. I told him to stop.

MR. KAHN: Oh, he told me to stop.

MR. JASKIEWICZ: Well -

MR. KAHN: I will withdraw whatever was on the record, and I will ask you this question -

BY MR. KAHN:

Q. On July the 24th, 1959, the date on which you allege that Mr. Beckelman drove a Suburban Transit bus, will you tell us to what number or what address did you call to obtain the bus? A. I don't remember the number.

I don't know D.C. Transit's, Atwood's, or anybody's number, as a matter of fact.

Q. I didn't ask you what D.C. Transit's number was. A. Well, I don't —

Q. I didn't ask you what Atwood's number was.

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I asked you — A. I don't know what number.

Q. You don't know what number? A. No, sir.

Q. All right.

I ask you once again: Have you any type of document in the hearing room to affirm your oral statement that you dealt with Suburban Transit Company in or about July the 24th to obtain a bus for Mr. Beckelman to drive?

MR. JASKIEWICZ: I object to it as being repetitious.

MR. CUNNINGHAM: Overruled.

THE WITNESS: I don't know of any evidence.

I don't have any invoices as such.

MR. KAHN: All right.

BY MR. KAHN:

Q. Now, would you look through your documents that you have here and show me any additional document, if any, where you contend that you originated a passenger in the City of Alexandria by motor bus? A. In addition to this?

Q. In addition to July 24th, 1959. A. By bus?

Q. By bus.

Let me ask you one inclusive question, Mr. Davis: Would you look —

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MR. CUNNINGHAM: Well, let's get the answer to this question, Mr. Kahn.

MR. KAHN: All right, sir.

THE WITNESS: I believe Mr. Jaskiewicz —

MR. JASKIEWICZ: What is that?

THE WITNESS: No.

In '59.

Don't you have some -

MR. JASKIEWICZ: You have got the other file right there.

THE WITNESS: Oh, this is '60.

MR. KAHN: This was '59 you were looking at.

THE WITNESS: No.

You have some '59.

MR. JASKIEWICZ: This is '59.

This is '60.

THE WITNESS: No. You had them this morning.

MR. JASKIEWICZ: Oh.

THE WITNESS: You put them in evidence.

MR. JASKIEWICZ: This is '59.

This is '60.

THE WITNESS: That's '60, too.

Let's see. This looks like - that looks like a bus there.

Let's see. That one says, "Bus" and this one says "Bus".

MR. KAHN: All right.

BY MR. KAHN:

Q. Now, you have handed me four manifests. A. Here.

Q. One is dated - A. Here's some more.

Q. You have now handed me six manifests. A. Yes.

Q. One is dated July the 25th, 1959, - A. Yes.

Q. - and under the term "Holiday Tours", as shown in Exhibit 25, the word "Thursday", "Al" and "Bus" appears; correct? A. Yes.

Q. Would you tell me what, on this document, leads you to believe that this bus originated passengers in the State of Virginia? A. Oh, excuse me.

Let me check and see.

Now, I can't tell, see, because they use a ticket number, and they had - the driver had the ticket to know where to pick up.

See, they use this ticket number here instead of where they're supposed to go. So -

Q. Do we agree, Mr. Davis, there is nothing on this manifest to show that any of the names listed on that represent people originated in the Commonwealth of Virginia?

[200]

A. You're right.

It just says numbers there, the ticket numbers.

Q. Now, the next manifest that you showed me was under the date of June 16th, 1959, and under the words "Holiday Tours", like in Exhibit 25, the word "Al" and "Bus" appears. A. Yes.

Q. Again I ask you whether or not there is anything to indicate that this bus originated a passenger in the Commonwealth of Virginia?

And you are pointing to a legend, under "Number", "PG", meaning, "Presidential Gardens"? A. Yes.

See, over here where it says, "P. Gardens" - they collected the money.

Q. Is it your testimony that the bus went over to Presidential Gardens to pick up those people? A. That's true.

Q. Whose bus was it? A. It was a Suburban bus from out there in Maryland.

Q. Where is this shown? A. From out there in Maryland.

Q. Where is this shown? A. It doesn't show, but the Maryland buses were the only ones we used in '59.

We started using others in '60.

* * * *

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Q. Again, you have handed me a document, a manifest of

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August the 11th, 1960, with the word "Al". Is there anything to indicate on this document that a bus was allegedly operated by Al Beckelman.

Is there anything on this? A. Yes, sir.

It wasn't operated by him, because he didn't operate any of Atwood's buses.

On the back is a breakdown on the money. That's Al, alone he couldn't handle that many people. He couldn't handle that many people by himself, so I imagine - if you look, you'll find we had a bus rented from Atwood on 8/11/60.

Q. Well, then, this wasn't - A. Let me see.

Q. - one of the buses that were chartered from Atwood Transport Lines. A. But we had our man on that -

Q. I understand that. A. - on the tour.

Q. Mr. Davis - A. Yes, sir.

Q. - you identified as Exhibit No. 7 a number of invoices from Atwood Transport Lines in the month of August 1960, and there is no invoice for any bus that was chartered to you by Atwood for August the 11th, 1960.

Now, how do you explain the manifest?

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A. Well, we had somebody on somebody's bus.

* * * * *

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Q. Now, Mr. Davis, let's go through these yellow pages that you refer to in your application.

For the year 1960 -

MR. KAHN: This is Exhibit No. 1 -

Is it No. 1-A?

MR. JASKIEWICZ: 1-D, I think, Mr. Kahn.

MR. KAHN: 1-D.

BY MR. KAHN:

Q. - in the Yellow Pages in the Washington telephone directory, the name "Holiday Tours" appears, "Courteous Chauffeurs, Guides, Reasonable Rates", and it gives a number in Bethesda and

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it gives a number of the Fairfax Hotel; isn't that true? A. Yes, sir.

Q. All right. A. That's on the limousine, though.

Q. It says, "Limousine Service". A. Limousine service.

Q. All right.

Now, in - A. What does it say about sightseeing?

Q. Wait a minute. A. What does it say about sightseeing?

Does it say something about sightseeing, too?

Q. Wait. We'll come to this.

On the second page, for 1960, under the heading, "Sightseeing", you have "Holiday Tours", and then:

"Downtown and Bethesda"

"Sightseeing from Cadillac Limousine?"

"Downtown - Fairfax Hotel"

"Bethesda, Maryland".

Now, is there anything in either of those notices in the Yellow Pages that you were holding yourself out to operate motor buses? A. No, sir.

Q. Is there anything in those advertisements to indicate that you had any place of business or a telephone number in the

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Commonwealth of Virginia within the scope of the jurisdiction of this Commission? A. No. There's no telephone number listed.

Q. All right.

Now, go back to the year 1959, which is Exhibit 1-E in your application, and under "Holiday Tours" under "Sightseeing", it reads:

"Route 240, Bethesda, Maryland"

"Cadillac Limousines Available"

"Personally conducted tours".

I ask you: Is there any mention of a bus service there? A. No, sir.

Q. The only number listed in 1959 was the number in Bethesda, correct? A. Yes, sir.

Q. All right. In 1958, Exhibit 1-F, under "Sightseeing", it reads:

"Holiday Tours" "Cadillac Limousines Available" "Personally Conducted Tours".

And they give only a Bethesda number; is that correct? A. Yes, sir.

Q. Is there anything in that advertisement — A. It says — it mentions — "Alexandria, Mount Vernon" —

Q. But the question was: Does it say anything about buses?

A. No.

* * * *

Q. Did you ever operate a vehicle — and I'm talking now prior to March 22nd, 1961 — with the name "Holiday Tours" or "Holiday Tours" labelled as the operator of the vehicle? For example, you've seen on the buses, "D.C. Transit", "AB&W", "WV&M". Prior to March the 22nd, 1961, did you ever operate a bus in the Washington Metropolitan Area with the name "Holiday Tours, Inc.", as the owner-operator? A. I don't recall.

* * * *

CROSS EXAMINATION

BY MR. SMITH:

* * * *

Q. * * * Do you have available to you in this hearing room now, Mr. Davis, or does your counsel have in his possession any agreement entitled, "Lease", or otherwise, between Holiday Tours, Inc., dated prior to March 22nd, 1961, with any motor bus carrier or supplier of such equipment setting out terms and conditions on which you are to assume complete control of the equipment that was turned over to you or made available to you?

A. Never had any agreement with anybody.

Q. In other words, you just called up and chartered a bus;

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is that correct? A. That's right.

* * * *

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REDIRECT EXAMINATION

BY MR. JASKIEWICZ:

* * * *

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Q. Were you ever advised by the Interstate Commerce Commission that you could not operate a bus? A. No, sir.

MR. SMITH: I object to that question, and the answer, Mr. Examiner.

MR. CUNNINGHAM: On what grounds?

MR. SMITH: On the grounds that what he was advised by someone else is hearsay of the purest, rankest kind. It's the same thing as saying: "What was he told on the telephone?"

MR. CUNNINGHAM: I think I'm going to sustain the objection, counsel.

* * * *

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BY MR. JASKIEWICZ:

Q. Can you tell us, sir, as to your policy during that period of time, as to whether or not you would make buses available? A. Well, where we got where we had more people than we could handle with limousines, we had to resort to buses.

* * * *

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Arlington, Virginia
Wednesday, April 17, 1963

* * * * *

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THOMAS PARRAN, JR.

was called as a witness by and on behalf of the Applicant, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JASKIEWICZ:

* * * * *

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Q. During the period 1953 to 1960 what occasion, if any, did you have to make your buses available to various sightseeing companies or other concerns? A. I don't recall at any time during that period that I ever leased buses by virtue of a written lease between the

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parties. What I did or what was usually - what other companies did, I presume -

Q. Just talk about your own company, Mr. Parran. A. Well, we rented buses. We chartered them to various groups and other companies.

Q. And on what basis? A. Both on a mileage basis - according to our tariff or a mileage basis, whichever was appropriate for the type of work they were going to do.

If it was local work where not many miles were involved, we chartered them or leased them on an hourly basis. If it was to Coney Island or Atlantic City, we rented them or chartered them on a mileage basis.

Q. Can you recall during the period '53 to '60 the names of any companies or concerns or individuals to whom you made buses available?

MR. KAHN: Why don't we get specifically to this question whether or not he chartered any buses or made any buses available to Holiday Tours or Mr. Walter Lee Davis?

MR. JASKIEWICZ: Well, I can ask that question, Mr. Examiner, but I was afraid it might be a little bit leading and I might catch an objection.

MR. KAHN: Oh.

MR. JASKIEWICZ: If counsel is not going to object

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to a leading question, I would be glad to ask that question and save a little time.

MR. KAHN: Go right ahead.

MR. CUNNINGHAM: Since it has been invited, suppose you ask it, then.

BY MR. JASKIEWICZ:

Q. Mr. Parran, during the period in question, and specifically 1958 or 1959, did you or your company have occasion to lease any buses to Walter Lee Davis or Holiday Tours? A. What year are you speaking about?

Q. Fifty-eight and '59.

MR. SMITH: Again, the objection is to the word "lease", Mr. Examiner.

MR. JASKIEWICZ: Make available.

MR. CUNNINGHAM: I am sure we all know the meaning of the word "lease", Mr. Smith.

MR. SMITH: Yes, sir, but Mr. Jaskiewicz just used it again in asking a question. The witness, himself, has already indicated he didn't lease any equipment. He either rented or made available or chartered equipment.

MR. CUNNINGHAM: All right. The question has been amended to read "made available to".

MR. JASKIEWICZ: All right.

THE WITNESS: In 1958 I made available to Holiday

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Tours a bus on one or two occasions.

BY MR. JASKIEWICZ:

Q. And in 1959, sir? A. And in 1959 I rented or chartered to Holiday Tours an ACF 37-passenger bus, better known as IC-41, which I bought from Trailways.

I bought two of these buses from Trailways, and in 1959 I made available or rented Bus No. 65 to Holiday Tours on ten, 12, 15 different occasions.

Q. Now, where did you send that bus from?

Where did it go from, sir? A. This bus was dispatched from Prince Frederick, Maryland - and I had two ACF's in Prince Frederick - to their office on Wisconsin Avenue or an address on Wisconsin Avenue.

Q. Did you send your driver or just what happened? A. I sent a driver with the bus, and my driver was not qualified to use the bus here in Washington, and they furnished the driver.

The bus was left there for maybe one day or two days at a time. We would pick it up, and, again, he would call and we would send it up again for him.

Q. In other words, you made the vehicle available without a driver to Holiday Tours? A. That's correct.

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Q. Do I understand correctly that was by an oral agreement or understanding? A. That was by telephone conversation.

Q. And, just for the record, please, how did you deal with other companies that you made buses available to? A. Mostly by telephone.

Q. And I would like also to have in the record, sir, if you can recall, any other companies to whom you made buses available.

MR. SMITH: Object. That's completely irrelevant and immaterial, Mr. Examiner, to this hearing.

MR. CUNNINGHAM: Overruled.

MR. JASKIEWICZ: Well, we think it is material.

THE WITNESS: W M and A, Trailways, Safeway Trailways, some

Baltimore Companies, Baltimore Motor Coach Company, Harford Motor Coach Company in Baltimore.

MR. JASKIEWICZ: All right, sir.

BY MR. JASKIEWICZ:

Q. Now, if I understand correctly, you received an order from Holiday Tours over the telephone, is that correct, for a bus? A. That is correct.

Q. Would you tell us, please, when did Mr. Davis contact you with respect to this hearing? A. Last night, at 9:30 p.m.

* * * *

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CROSS EXAMINATION

BY MR. KAHN:

* * * *

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Q. What was the general area in which Suburban was authorized to operate? A. We were authorized to operate from Rockville, Bethesda, Chevy Chase, Wheaton, Glenmont, College Park, Massachusetts Avenue, Bradley Boulevard into Washington, D. C.

Q. You had no authorized operation down to Prince Frederick, did you? A. In 1959?

Q. Yes. Suburban Transit didn't have any authority from the Interstate Commerce Commission to operate — A. Suburban Transit, Mr. Kahn, as you very well know, — you represented me in many cases — was Thomas Parran, Jr., and I had two buses in Prince Frederick that belonged to Thomas Parran, Jr.

Q. That's right.

These two buses, — that's what I want to get for the record — weren't Suburban Transit buses?

These two buses were buses that you had down in Prince Frederick, Maryland, isn't that true? A. All the buses out there were private buses of Thomas Parran, Jr., in my name.

You know that, Mr. Kahn.

Q. Mr. Parran, the Suburban Transit Company had no

route between Washington, D. C., and Prince Frederick, Maryland, did they? A. They had - Thomas Parran, Jr., ran a route between Solomons Island and Baltimore, which I used Suburban Transit buses on, since they were all in the name of Thomas Parran, Jr., trading as Suburban Transit Company.

I used them many, many places. I used to haul the high school groups from Prince Frederick on charter trips, and various other groups, American Legion down there and everybody else, with Suburban buses.

Q. Mr. Parran, isn't it true that in your agreement with the WM and A Transit Company these two buses were not included in the fleet of buses that were transferred to WM and A? A. That I would ultimately sell to them. They were not included. They were held out; yes, sir.

Q. They were held out and they were kept down in Prince Frederick?

A. That is correct, because when the contract -

Q. And the monies -

MR. JASKIEWICZ: Excuse me.

BY MR. KAHN:

Q. - that you received -

THE WITNESS: You are interrupting me, Mr. Kahn.

MR. KAHN: Well -

THE WITNESS: Ultimately, when I would make final settlement, which was made in February, 1960, it was in the agreement that these two buses would not be included in the contract.

MR. KAHN: All right.

THE WITNESS: That's the only difference.

BY MR. KAHN:

Q. Now, actually, the monies that you received from Mr. Davis were

not turned into Suburban Transit Company; isn't that true? A. Suburban Transit Company was Thomas Parran, Jr., and he paid me and I put the money in my pocket.

Q. That's right, and this was not shown - this was during the time W M and A Transit Company was operating your business, and the monies you received from Mr. Davis were not turned in to W M and A; isn't that true? A. The monies that were received up here in Montgomery County was income to Thomas Parran, Jr.

The Internal Revenue says here that I owe them \$40,121.42 income tax for 1959. "Please send check by return mail."

That was all Thomas Parran, Jr.'s, business.

Q. Mr. Parran, would you answer the question? A. Well, you are trying to distort this situation, Mr. Kahn.

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Q. I am not trying to distort the situation, Mr. Parran.

I want the facts on the record about Suburban Transit Company allegedly chartering buses - A. Let's get one fact straight. Suburban Transit Company was Thomas Parran, Jr.

Don't confuse the Examiner.

It was not a corporation.

Q. Mr. Parran, I'm not - A. You're trying -

Q. I didn't call you as a witness. You came here yourself.

A. You're trying to distort the situation.

MR. CUNNINGHAM: All right, Gentlemen.

MR. KAHN: All right.

MR. CUNNINGHAM: Let's simmer ourselves down -

MR. KAHN: I am not trying to distort the situation.

MR. CUNNINGHAM: - to questions and answers.

MR. KAHN: All right.

BY MR. KAHN:

Q. Mr. Parran, during the time you told the Examiner on direct examination that Suburban Transit Company allegedly chartered or made

available buses to Mr. Davis, that company was under the management of W M and A Transit Company; isn't that true? A. As my manager.

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Q. Well, it was under the management under an order of the Interstate Commerce Commission; isn't that true? A. The order read — and you may produce the order for the Examiner, if you want to do it — that they — any agreement between the parties was satisfactory as long as the operation remained in the name of Parran and we drew up a management agreement for one dollar. I used the office out there. I filled up my car out there. I had access to any bus out there because they were all titled in the name of Thomas Parran, Jr., just like my automobile.

MR. KAHN: Mr. Examiner, I had no knowledge that Mr. Parran was going to be a witness, and I would like permission to file, as an exhibit in this case, a certified copy of the Commission's order that we're talking about.

MR. CUNNINGHAM: All right.

MR. KAHN: Any objection, Mr. Jaskiewicz?

MR. JASKIEWICZ: I have no objection.

MR. KAHN: All right.

BY MR. KAHN:

Q. Now, Mr. Parran, during this time of management of your company by W M and A, the two buses or the one bus that you made available to Mr. Davis was one of the two buses that you had down at your home, or your aunt's home or your mother's home down in Prince Frederick; isn't that true?

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A. Yes, sir.

Q. And, as you said to the Examiner and volunteered, any monies that Mr. Davis gave you you put in your own pocket; isn't that true?

A. Well, so to speak. I might have deposited it in the bank, but I mean it went to the benefit of Thomas Parran, Jr.

Q. But it didn't go to the income account of W M and A as manager of Suburban Transit Company, did it? A. It was included with my income tax in the same basis or the same monies that was collected at Suburban Transit.

Q. Mr. Parran, would you answer the question?

The monies didn't go into the bank account of W M and A Transit Company, did they? A. No, sir.

Q. No, sir.

Now, W M and A Transit Company was the person responsible, under the certificate issued to you, to provide service between the points in Maryland that you have indicated on the one hand and the District of Columbia? A. No, sir.

I was sued for accidents.

Q. Oh, Mr. Parran — A. The Interstate Commerce Commission held me responsible for the route's operations and everything else in 1959.

Mr. Kahn, you're trying to distort the situation.

Q. Mr. Parran, were you an employee of W M and A during this time of management? A. No, sir.

Q. Did you have any managerial control of the operation during this period of management? A. Of Suburban?

Q. Yes. A. I owned it.

Q. I'm not saying whether you owned it.

You had contracted to sell it to W M and A, — A. I had —

Q. — and you — A. — a five-hundred-dollar deposit on a twenty-eight-thousand-dollar contract.

Q. I'm familiar — A. You're familiar with that, Mr. Kahn.

Q. — with the details, Mr. Parran.

— and joined with W M and A and asked the Commission to permit W M and A to manage your business, didn't you? A. I wanted to go fishing on my yacht.

Q. Mr. Parran —

MR. CUNNINGHAM: Mr. Parran -

THE WITNESS: I had a sixty-eight-thousand-dollar yacht, -

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MR. KAHN: Mr. Parran -

THE WITNESS: - and I wanted to go fishing.

MR. CUNNINGHAM: Mr. Parran -

THE WITNESS: Mr. Kahn, you're trying to distort the situation.

MR. KAHN: Mr. Parran, I -

MR. CUNNINGHAM: Mr. Parran, when I talk to you, sir, I expect you to listen.

THE WITNESS: Yes, sir.

MR. CUNNINGHAM: I want you to confine yourself to answering the question as directly as you can; if you need explanations, to make them.

THE WITNESS: All right, Mr. Examiner.

MR. CUNNINGHAM: But let's not toss in all these asides.

THE WITNESS: I'm awfully sorry, Mr. Examiner. I apologize, but Mr. Kahn used to represent me as my counsel. He knows the situation as well as I do, and he's trying to distort the situation.

He used to represent me for six years; as my counsel. So, he knows the whole situation, and it sort of provokes me that he's trying to distort the situation.

MR. CUNNINGHAM: I can appreciate that.

THE WITNESS: And I apologize to you, sir.

MR. KAHN: I want to assure the Examiner and Mr.

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Parran and the other people in the hearing room that I'm not distorting it.

* * * *

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BY MR. KAHN:

Q. * * * And had you employed any colored drivers during the time that you were running the line? A. Suburban?

Q. Yes. A. Yes, sir.

Q. Yes. A. I had two.

Q. All right.

Who insured this bus — under what insurance policy was the bus insured — that you made available to Mr. Davis? A. The same insurance that was on the other buses that you elect to call Suburban that were titled the same way this particular bus was — Thomas Parran, Jr., trading as Suburban Transit. They were insured by Continental Casualty.

Q. Wasn't that on a gross-receipts basis? A. Yes, sir.

Q. You didn't report the income, did you? A. I said a few minutes ago I didn't — I said it was reported on my income tax, I'm sure —

Q. I didn't ask you whether you reported it on your income tax.

You didn't report it to the insurance company, did you? A. I don't recollect.

* * * * *

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WALTER LEE DAVIS

resumed the stand and testified further as follows:

REDIRECT EXAMINATION (Cont'd.)

* * * * *

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MR. CUNNINGHAM: And, because you have no invoice from a bus source, you indicate that these 27 people were moved by three limousines?

THE WITNESS: Yes, sir.

MR. CUNNINGHAM: Or more?

THE WITNESS: Yes. I'm assuming that's how they were moved.

MR. CUNNINGHAM: I take it they weren't all moved in the same vehicle?

THE WITNESS: No. I'm sure of that, but in the absence of another manifest for the 25th, which there is another one, no doubt, in this stack somewhere - but these are the ones for Virginia that we pulled out. So, there's probably another one for the 25th that will show that we had so many people in Maryland, and the Fairfax Hotel also, but for this one we didn't find the invoice for the 25th.

So, we just have to assume it was a limousine.

* * * *

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BY MR. JASKIEWICZ:

Q. Now, Mr. Davis, let me refer you to a manifest dated October 18, 1960, identified as RRR, as to which you indicated a limousine was used. Will you tell us, please, with respect to that particular manifest, how many people were involved and how it was operated or handled?

A. Twenty-three people.

Q. I believe you mentioned something about a relay. Will you explain to us what that would be?

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A. Well, we had two limousines operating that day. Lisle Kendall operated one and Mr. John Shaw operated the other one. From the office in the morning, Lisle Kendall took eight persons and took them down and put them in the Bureau of Printing and Engraving.

From there he went over to the Holiday Inn. He picked up six more people, and he brought them over and put them in the Bureau of Printing and Engraving.

Mr. Shaw left from out at the office with three people, went by the Fairfax and picked up two, which gave him five people in his first load. Then he went to the Holiday Inn and picked up four more people for his second load.

In other words, they run two loads of relay, and by the time he gets his second load in the first load will be coming out of the building. He goes around the back of the building, picks them up and takes them over and puts them in the Smithsonian Institution, anywhere from forty-five, fifty minutes, whatever the time is up there, and then he comes back and gets his second load and continues his relay.

* * * *

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Arlington, Va.
Thursday, May 9, 1963.

* * * *

[359]

WALTER LEE DAVIS

resumed the stand and testified further as follows:

REDIRECT EXAMINATION (Continued)

* * * *

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MR. CUNNINGHAM: Now, do I further understand your work was done primarily in limousines except where the number of people at some of these locations were too large to be handled by one or two or three of your vehicles, in which case you made arrangements to have buses available to transport them?

THE WITNESS: That's correct, sir.

* * * *

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MR. CUNNINGHAM: What is your procedure from there on? Do you take your brochures and show the people so that they will know the various services?

THE WITNESS: Yes. We show them the brochures, show them where each tour will go, what buildings they will see on each tour.

MR. CUNNINGHAM: What did you do in instances where tours don't fit the individual's desires?

Suppose he's been here before and he's seen one or more items on each one of your tours.

THE WITNESS: Then we suggest to him, rather than take our regular tour, just lease a limousine by the hour, and they can go anywhere they want to, then, rather than follow our regular pattern.

* * * * *

MR. SMITH: In other words, you are saying, Mr. Jaskiewicz that you believe Exhibit No. 5, the introduction thereof in evidence, will establish in this hearing that Holiday Tours, Inc., was doing business in the State of Virginia?

MR. JASKIEWICZ: I didn't say that at all, if the Examiner please.

* * * * *

MR. CUNNINGHAM: I am going to sustain the objection to these, mainly on the basis — at least that portion of those letters signed by Mr. William Young.

I don't think there is any objection as far as those signed by Mr. Jaskiewicz, who is present and is subject to cross-examination, if requested, but those replies by Mr. Young are certainly not subject to cross-examination and I will not allow those in.

* * * * *

MR. CUNNINGHAM: I think if this had been a document received from the Maryland Public Service Commission, it would be, in effect, a document of our own files, and one which I would not find objectionable; but, in view of the condition this document is in, and what it purports to say, and so forth, I will uphold the objection to this Exhibit 6, also.

* * * * *

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ALBERT FRED BECKELMAN

was called as a witness by and on behalf of the Applicant, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION**BY MR. JASKIEWICZ:**

Q. Would you please tell us your name and indicate your

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address? A. Albert Fred Beckelman, 232 Newcomb, Southeast.

Q. And that is in Washington, D.C.? A. That's right.

Q. Would you spell your name, please, for the record?

A. B-e-c-k-e-l-m-a-n.

Q. And what is your occupation? A. I'm an independent cab driver.

Q. And how long have you been an independent cab driver?

A. Twenty-three years.

Q. What do you mean by "independent cab driver"? A. Well, just that. I'm completely independent. I have my own taxicab, and I'm a member of the Washington Cab Association.

Q. In the past, sir, have you had any occasion to work for Holiday Tours, Inc., or Holiday Tours, the predecessor concerned? A. Yes.

Q. When did you start to work for Holiday Tours, Inc.? A. Well, actually starting to work - I started in 1959, but I did - in 1958 I run one, as I remember - I was working with M. Grace Line Tours, and Mr. Davis phoned Mr. Bellosi, who was the manager, and asked him if he could do without a driver for the day, and I drove one day in 1958, and all of the bus work for Mr. Davis in 1959.

Q. You worked for Holiday Tours in 1959.

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Did you work for them in 1960? A. Yes; I did.

Q. And just what kind of work did you do? A. Well, I was a driver and lecturer.

Q. And what type of vehicles did you drive? A. Well, I drove bus and limousine.

Q. And in what year did you drive a bus? A. Well, I drove a bus in 1959. I did all of his bus driving.

Q. In 1959? A. That's correct.

Q. When you drove the bus, where did you make your pickups of the passengers? A. You mean, specifically?

Q. Yes. A. Well, it would depend on the number of people.

When I was driving the bus, you mean?

Q. Yes. A. It would depend on the number of people that we had at the different points of origin.

For example, if we had upwards of 20 people at the office, I would start at the office.

If we had 20 people at Holiday Inn in Virginia, I would start in Virginia.

Q. Well, by the "office", you mean where?

A. Bethesda, Maryland.

Q. And what address? A. 8410 Wisconsin.

Q. Now, what time did you normally leave the office there?

What was your - A. Eight o'clock.

Q. And then, normally, where did you go after that? A. Well, I'd proceed down Wisconsin. We had several places along there, but you seldom made stops, because two or three of them were merely tourist homes, and you may average one stop every couple of weeks.

We had the motel, Bethesdan. We'd stop there at approximately - between eight-five and eight-ten, proceed down Wisconsin Avenue, and there was no parking there. So, it was always - the people were always notified to be out in front for the bus to pick them up, and then I would proceed down Wisconsin to Massachusetts, to the Fairfax Hotel.

Q. And what time did you normally pick up at the Fairfax Hotel?
A. Nine o'clock.

Q. Now, when you got your people all assembled in the bus or limousine, what did you do? A. I'd proceed on tour on our pattern.

Our pattern was five buildings -

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Q. Well, excuse me.

Before you started on your tour, what did you tell them, if anything?

A. Well, I instructed them as to the type of tour, but it was a scheduled tour, and I had to depend on them to keep on a schedule, and when I put them in a building at a given time and told them to be out at a given time - that I expected them to be there; I had to do that in order to hold a schedule.

Q. Then, after you told them that, you began your tour? A. That's right.

I'd proceed to my first building, and usually the other limousines would feed more people to me.

Q. Now, did you maintain the same pattern all the time? A. Yes, sir.

Q. Are there various types of tours offered by Holiday Tours?

A. Yes, sir. Three types.

Q. And, providing those tours, each tour, did you adhere to the same routine each time? A. Yes, sir.

Q. Now, in 1959 you indicated you drove a bus for Holiday Tours.

Whose bus was that? A. Suburban Transit, as I remember.

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Q. And were you the driver and lecturer? A. Yes, sir.

Q. And just how did you accomplish that? A. Well, you drive the bus, and you have the public address system on it with a microphone coming up in front of your mouth, and you just lecture as you go along.

Q. Could you give us an indication, sir, of how many times you drove a bus in 1959? A. I don't remember.

Fifteen, twenty.

Q. Now, in 1960, sir, did you drive any bus -

MR. CUNNINGHAM: Could I ask a question -

MR. JASKIEWICZ: Certainly.

MR. CUNNINGHAM: - before you go on here, while we are on '59?

MR. JASKIEWICZ: Yes, sir.

MR. CUNNINGHAM: Mr. Beckelman, you said this vehicle you used in 1959 belonged to the Suburban Transit.

THE WITNESS: That's what was marked on there.

MR. CUNNINGHAM: This is the same organization that the previous witness, Thomas Parran, testified to.

THE WITNESS: Yes.

MR. CUNNINGHAM: Were you here -

THE WITNESS: Yes.

MR. CUNNINGHAM: - when Mr. Parran was testifying?

THE WITNESS: I was here, and I assume that's what he was speaking of.

MR. CUNNINGHAM: What color was the bus?

THE WITNESS: It was green, and light color on top - about a cream, I would say.

MR. CUNNINGHAM: Was it identified as a Suburban Transit bus?

THE WITNESS: Yes.

It was an ACF.

MR. CUNNINGHAM: All right.

Go ahead, Mr. Jaskiewicz.

BY MR. JASKIEWICZ:

Q. Now, just to follow up that, the bus was identified as a Suburban Transit bus.

Did all of the passengers, or tourists, on the bus have a ticket from Holiday Tours? A. Yes, sir.

Q. They were all Holiday Tours' sightseers? A. That's right.

Q. Now, in 1960, sir, did you drive any bus with Holiday Tours' passengers? A. No; I did not.

Q. Well, did you ever ride on a bus in which there were Holiday Tours' passengers in 1960? A. Yes; I did.

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Q. And would you tell us about that, please? A. Well, Mr. Davis — that was when Mr. Davis started chartering from or leasing from Atwood Transport, and they furnished the driver.

Mr. Davis always insisted on having his own lecturer on the bus until the man was properly trained, and we always got William Robey, and I lectured his bus and showed him the pattern for probably five or six tours, until he got onto the pattern.

Then I went back onto the limousine, and he took over as driver and lecturer.

Q. When you used an Atwood bus, what time did that leave the office? A. The same time.

Q. What time is that? A. Eight o'clock.

Q. And, again, we are talking about 8410 Wisconsin Avenue? A. That's right.

Q. Then you would go down Wisconsin and make the same pickups you indicated before? A. That's right.

Q. And then go to the Fairfax Hotel? A. That's right.

Q. What time would you get to the Fairfax?

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A. Nine o'clock.

Q. Now, after you got all the people and made your pickup at the Fairfax, what were the people told? A. They were told that it was a scheduled tour. I always instructed them, because some of them came from a different time belt, to synchronize their watches, and it was a scheduled tour, and I more or less wished that they would bear with me and hold the schedule as nearly as possible.

Q. Did you normally get that type of cooperation? A. Yes, sir.

Q. Now, with the Atwood buses, did you then go on the regular tour, as indicated? A. The same pattern.

Q. Now, tell us, sir, - take us through one of the tours, as to how it would go.

I mean: Where would you go first, and where would you go second?

A. Well, we would first go to the Bureau of Engraving and Printing for a guided-lecture tour.

Of course, while you're on tour, you're lecturing all the time, giving the background on points of interest en route to your first stop.

They would visit the Bureau of Engraving and Printing, usually took 35 to 40 minutes, depending on the crowd, and you'd instruct the people to be out at a given time.

Now, of course, sometimes it would vary as much as five to ten minutes.

We would proceed from there to the Arts and Industries Building at the Smithsonian Institution, en route giving the background. There they spent usually 35 to 40 minutes.

From there we went to the White House. That usually took thirty to thirty-five minutes.

From the White House, we went to the Capitol Building of the United States, and at the Capitol - that is where your pattern - one tour separated from the other.

On the Building Tour, the fifth building on the tour was the Archives Building, as indicated on the brochure. The fifth building on the other two tours, what we called the BCA Tour, Building-City-Arlington Intermediate Tour, and the All Day Tour, was the Lincoln Memorial.

That is also indicated on the brochure.

Now, when the people come out of the Capitol Building, I would put the Building Tour, which the people in the Building Tour, which was the

short tour and included the Archives Building — I would put them in the Archives Building — and I would put my other people into lunch.

Then the people in the Archives Building — it was just a 15-minute stop, because they just wanted to view the — usually, you know, the Declaration of Independence, the Constitution and the Bill of Rights — usually 15 minutes —

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and when they come out, Mr. Davis had cars there to distribute the people back to their points of origin or to their cars.

Q. Now, in the event the White House was closed — and it is on certain days — what did you do? A. Well, then, I would substitute usually — well, always the Museum of Natural History.

Q. Was that substitution made by you on behalf of Holiday Tours —
A. Yes.

Q. — or did the patrons tell you where they wanted to go? A. No.
Mr. Davis — I was always instructed by Holiday Tours as to which buildings I was to cover.

Q. Now, on one of the tours, I believe, there is an indication that there is a steamer trip down to Mount Vernon? A. That is correct.

Q. What did you do in connection with that? A. Well, after lunch, — the group that was going on the All Day Tour — the boat left Washington at two o'clock — I would get them from lunch, take them down to the boat, put them on the steamer.

The other group, which was on the Intermediate Tour — I would go up through Embassy Row and back over to Arlington National Cemetery, the United States Marine Memorial, the Pentagon Building, and the Lincoln Memorial, which was the fifth

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building on the Intermediate Tour.

Q. Now, when you handled these tours, was the same pattern applied as to whether you were driving a limousine — A. Yes.

Q. - or whether you were on a bus? A. Yes. We ran according to the brochures.

Q. Now, when you were riding the Atwood's buses, I understood you to say you were the lecturer on the bus - A. That's true.

Q. - until the driver was properly indoctrinated? A. That's right.

Q. During that initial period did you tell the driver where to go?

A. Oh, yes.

Q. Yes. A. Yes.

Q. Now, during that period of time, did you ever have occasion to sell additional tickets during a tour? A. A few, yes, sir.

Q. And these tickets were Holiday Tours' tickets? A. Yes, sir.

Q. Now, utilization of the Atwood's buses in 1960 - on any occasion did the driver ever tell you what to do or where he was going to go?

A. No, sir.

Q. Were you ever paid, sir, by Atwood's or Suburban Transit?

A. No. Mr. Davis paid me.

Q. Now, you have indicated that when the White House was closed, you would substitute a different building - Museum of Natural History.

I should like to ask you, sir, whether it was possible for any of the patrons to substitute one building for another during the tour. A. No.

On occasion they would bring it up, but I would explain to them on the brochure it said: "We reserve the right to substitute buildings."

But it had to be ours. You couldn't substitute just any building, because you take, for example, the Washington Monument - it might take them three hours to get through there. So, you had to hold your pattern.

Q. In addition to the pickups you made at the office, along Wisconsin Avenue and the Fairfax Hotel, can you recall any other points where you made pickups? A. Oh, yes.

I picked them up at Potomac Motor Court, picked them up at the Holiday Inn in Arlington, Virginia; picked them up at the Presidential Gardens in Virginia.

Q. Is that in Alexandria, the Presidential Gardens?

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A. Yes, sir. I think it's termed Alexandria.

Q. Any other points? A. Oh, on occasion; yes.

I picked up across the street from the Holiday Inn - at the South Gate. I can't think of any others, offhand.

Q. Can you tell us, sir, whether these pickups were made in bus or limousine, or both? A. Both.

* * * *

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CROSS EXAMINATION

BY MR. KAHN:

Q. Mr. Beckelman, these questions relate to the nature of your association with Mr. Davis.

Going back to 1959 when you were working with Mr. Davis, were you an employee of Holiday Tours in the sense that you received a regular weekly salary at a fixed amount? A. No; I did not.

Q. Were you ever employed in 1959 on any fixed-term basis, that is, from any particular day to any additional period? A. I was paid daily.

Q. Paid daily.

Isn't it true in 1959 that you were paid on those occasions on which you either drove a limousine or gave or referred business to Mr. Davis, or when you drove your own cab and transported some of Mr. Davis' patrons? A. I don't remember ever transporting any people for Mr. Davis in my taxicab.

Q. All right.

Were you paid, then, on the days that you drove a limousine for him? A. Yes.

Q. Were you paid a fixed amount? A. Yes.

Q. Regardless of the type of tour that you operated?

A. I received a daily guarantee.

Q. Well, would the guarantee vary if there were people taken on the all-day tour as distinguished from a City Tour? A. No.

Q. And the guarantee was a fixed amount? A. That's correct.

Q. Were you ever guaranteed any particular employment, like so many days per week? A. No.

Q. How did you know when to report to work? A. Well, I was told the night before, called, or I would call the office and see if they needed me.

Q. Well, let's assume you were working on Tuesday. Would you, or wouldn't you, according to your testimony come back to Bethesda at the conclusion of the day with the limousine? A. Usually; yes.

Q. What would be the occasions when you would not? A. When I didn't have people going back to Maryland.

Q. What would you do with Mr. Davis' limousine? A. Then I would park it in back of the Fairfax Hotel, -

Q. I see. A. - to be picked up the following morning.

* * * * *

Q. Yes. But no Social Security was deducted from your pay -

A. No.

Q. - or any other withholding taxes or anything else? A. No, sir.

Q. When you say you worked with Mr. Davis, you mean that on those occasions that he called you up to come out and drive for him, those were the days you went out? A. That's right.

Q. All right.

Now, I know it's very difficult.

Could you tell us on how many days in 1959 or the approximate number, do you think, that you drove for Mr. Davis? A. No, I couldn't.

Q. And your answer would be the same for 1960? A. That's right.

Q. Or for the first part of 1961? A. Sixty-one?

I didn't — I don't think I worked at all for Mr. Davis.

Q. All right. You didn't work at all in '61.

Now, wouldn't you — and I don't represent the Internal Revenue, but wouldn't you — have some sort of record as to the amount of money you received from Mr. Davis? A. Yes.

* * * *

MR. CUNNINGHAM: What was the normal seating capacity of these limousines that you got?

THE WITNESS: Well, they are classified as seven-passenger limousines, but Mr. Davis had them licensed to haul more, if necessary. He had a bus license when he had an LC tag.

MR. CUNNINGHAM: There were seats for seven?

THE WITNESS: You could seat eight very easily in them, sir, — three in the back, three on the jump, and two in the front

with the driver.

* * * *

BRIEF FOR PETITIONER

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,561

HOLIDAY TOURS, INC.,

Petitioner,

v.

WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION,

Respondent.

On Petition To Review and Set Aside
Orders Of The Washington Metropolitan
Area Transit Commission

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United States Court of Appeals
for the District of Columbia Circuit

FILED SEP 9 1964

Nathan J. Paulson
CLERK

(i)

QUESTIONS PRESENTED

I. Whether the Commission erred by considering (a) ownership of the bus-sized vehicles utilized and (b) Federal and State laws relating to pre-compact operating authority in determining whether petitioner was bona fide engaged in transportation pursuant to Article XII, Section 4(a) of the Washington Metropolitan Area Transit Regulation Compact, on the effective date of the Compact.

II. Whether the Commission erred in finding that (a) the bus transportation service was not instituted and conducted in good faith and (b) control of the transportation service was not by petitioner on and prior to March 22, 1961.

III. Whether the findings of the Commission (a) that the bus transportation service was not provided by petitioner and, (b) that petitioner had committed deliberate violations of the Interstate Commerce Act, were supported by substantial evidence.

IV. Whether the Commission utilized an additional standard of fitness and thereby exceeded the provisions of Article XII, Section 4(a) of the Compact.

V. Whether the Commission abused its procedural discretion in (a) allowing intervention of A B & W Transit Company, the Gray Line, Inc., and Diamond Tours, Inc., (b) giving public notice of the application and, (c) rejecting evidence of petitioner as to its operations subsequent to the effective date of the Compact.

VI. Whether the Commission failed to apply correctly the statutory standards of Section 4(a) and thereby denied petitioner substantive and procedural due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,561

HOLIDAY TOURS, INC.,

Petitioner,

v.

WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION,

Respondent.

On Petition To Review and Set Aside
Orders Of The Washington Metropolitan
Area Transit Commission

BRIEF FOR PETITIONER

JURISDICTIONAL STATEMENT

This case involves a review by the United States Court of Appeals for the District of Columbia Circuit of the validity of orders of respondent, Washington Metropolitan Area Transit Commission, served December 13, 1963 and March 10, 1964, entered in the proceeding before the Transit Commission identified as *In the Matter of Holiday Tours, Inc.*, Application No. 18, Docket No. 31. Petitioner's Petition for Reconsideration, Reopening and for Oral Argument was denied by the Commission.

The jurisdiction of this Court to vacate and set aside the Commission's orders is conferred by Congress in Title I, Article XII, Section 17(a) of the Washington Metropolitan Area Transit Regulation Compact (reproduced in Appendix B), Public Law 86,794, 74 Stat. 1031, as amended, and was invoked by a petition to review filed pursuant to U.S. Ct. of App. D.C. Cir. Rule 38, 28 U.S.C.A. Venue of the Court is also established by the same Section 17(a) of said Compact.

STATEMENT OF CASE

A. The Evidence

The statement of original proceedings is contained in the petition to review (reproduced in Appendix A).

The application, filed pursuant to Article XII, Section 4(a) of the Washington Metropolitan Area Transit Regulation Compact, under review was the subject of a hearing held in Arlington, Virginia, on April 15, 16, 17, 1963 and May 9, 1963 before Russell W. Cunningham, General Counsel of the Commission as presiding officer. Appearances were made and accepted on behalf of protestants, W V & M Coach Company, Inc., D.C. Transit System, Inc. and D.C. Transit System of Maryland, Inc. (Tr. 4, 6) and intervenors, The Gray Line, Inc., A B & W Transit Company, Inc. and Diamond Tours, Inc. (Tr. 5 & 11). All but the latter party are intervenors in support of respondent before this Court.

Holiday Tours, Inc., hereafter referred to as petitioner, is a District of Columbia corporation and has been in corporate existence since November 1959 (Tr. 20-21). The purpose for which the corporation is organized is as follows:

To operate motor vehicles for transportation of passengers, franchise tours over highways and public roads and to charge and receive compensation therefor. To purchase automobiles, buses, trucks and necessary equipment. To acquire land, buildings for the purpose of terminals, places of

the sale of tickets and the handling of baggage and luggage. To operate news stands for the sale of newspapers, magazines, cigarettes, cigars as it relates to the terminal points in the business of the corporation.¹

The business of petitioner as of the critical date, March 22, 1961, was that of transporting passengers for sightseeing purposes (Tr. 23). Its primary place of business on March 22, 1961 was at 8410 Wisconsin Ave., Bethesda, Maryland (Tr. 24) with offices also maintained, at that time, at the Fairfax Hotel, Washington, D. C., and the Holiday Inn, Glebe Road, Arlington, Virginia (Tr. 27). All offices were in operation on March 22, 1961 (Tr. 27).

On the critical date, petitioner was a member of the Bethesda-Chevy Chase Chamber of Commerce, the Washington Board of Trade, the Washington Convention and Visitors Bureau, The Hotel Greeters, The National Organization of Travel Associations, The Maryland Travel Council and the Virginia Travel Council (Tr. 26, 84).

Petitioner's practice, on the critical date, was to sell individual tickets to patrons for sightseeing tours (Tr. 28). Limousines operated by petitioner were licensed by the Public Utilities Commission of the District of Columbia (Tr. 66-72, Exhibits 2, 3 and 4). These vehicles were licensed with a so-called "C" identification and were unlimited as to the number of passengers which could be carried (Tr. 69). These vehicles were also licensed in Virginia and Maryland (Tr. 72).

In 1959 petitioner obtained buses from Suburban Transit Company of Maryland, leased for sightseeing purposes (Tr. 57). In 1960 petitioner obtained buses from Atwood Transport Lines, Inc. for the purpose of sightseeing (Tr. 57-58). Exhibit No. 1 and Exhibit No. 1-A to the application in the proceeding below demonstrate, by certified letter of the

¹ The Articles of Incorporation of petitioner appear in the record below as Exhibit 9 to the application. Respondent's Rules of Practice and Procedure provide that "pleading" includes applications (Rule 2-08) and Rule 20-09 provides that the record shall consist of all pleadings.

General Manager of Atwood to the Executive Director of Respondent, that Atwood had chartered to petitioner buses "for their use in the Washington Metropolitan Area" and these consisted of 29, 44 and 45 passenger air-conditioned buses. Exhibit 7 below represents invoices of Atwood Transport to petitioner for the occasion of charges for "41 passenger bus all day non-Lectured tours" and "45-passenger bus each Day Lectured sightseeing." These invoices are dated through August and September, 1960.

In 1961 buses were leased from Atwood Transport Lines, Inc., D. C. Transit System, Inc., and Washington, Virginia and Maryland Coach Company for sightseeing purposes (Tr. 58).

As to Atwood's buses in 1960 and 1961, drivers were furnished and the charge was by the hour (Tr. 58). Petitioner normally provided a guide to familiarize the driver with the specific operational pattern of petitioner (Tr. 60). In this operation the driver was specifically instructed as to time schedules and all aspects of the tour (Tr. 98). The Atwood drivers had no authority to deviate from the instructions of petitioner (Tr. 99). All tickets were sold by petitioner (Tr. 59).

In all cases, when the drivers were not those of petitioner, the tour remained in the control of petitioner (e.g., Tr. 61, 62, 99).

From 1958 through the critical date, petitioner advertised its sightseeing operations by various brochures and publications (Tr. 82, 83). Exhibit 1-C of the application below is a brochure showing specific tours by petitioner by Cadillac limousine or air-conditioned coach.

The Exhibits and testimony demonstrate that control of the tours was in petitioner and the tour patterns were kept intact (Tr. 84), selected by petitioner (Tr. 85) and that passengers were precluded from making independent choices (Tr. 86).

The nature of the operations on March 22, 1961 and prior thereto were as follows:

A vehicle (bus or limousine), would begin at 8410 Wisconsin Avenue at 8:00 a.m. on weekdays and at 8:30 a.m. on Saturday and Sunday. The vehicle would proceed to pick up sightseeing patrons at various motels and tourists homes on Wisconsin Avenue between 8:00 and 8:30, at 8:30 and 9:00 depending upon the starting time, then would proceed to the Fairfax Hotel arriving there at 8:30 a.m. or 9:00 a.m., depending upon the starting time. The first stop of the tour would always be the Bureau of Engraving and Printing. If patrons were at other locations they would be picked up generally by another vehicle and tied into the regular tour beginning point at the Bureau of Engraving and Printing. After this tie-in, a regular tour pattern would be followed. The schedules were strict, particularly to effect coordination with the Potomac River Steamer ride which departed at a scheduled time (Tr. 68-90).

Holiday Tours, Inc., on March 22, 1961, had insurance in effect in the amount of \$50,000 and \$100,000 for liability coverage and \$10,000 for property damage. The coverage was with the American Casualty Company which carried policy No. T-693536 (Tr. 90). Notice of this insurance was duly filed in the States of Maryland, Virginia and the District of Columbia (Tr. 90).

Prior to March 22, 1961, petitioner made specific inquiry as to the States of Maryland, Virginia and the District of Columbia and the Interstate Commerce Commission as to any requirements to be followed by it (Tr. 90). Petitioner made every effort to comply with all the state laws of Virginia, Maryland and the Federal Statutes (Tr. 92). On March 22, 1961 and prior thereto, petitioner had never been stopped from operating limousines or buses by any officials of the Commonwealth of Virginia, the State of Maryland nor the District of Columbia (Tr. 93). From 1957 through March, 1961, petitioner and its predecessor organization conducted operations openly, without concealment and with no effort whatsoever to disguise the operation (Tr. 93). Petitioner conducted operations with the specific intent to provide a transportation service to the public (Tr. 93).

Additional evidence of record as to the operations of petitioner in 1959 and 1960 is found in Exhibits 23 to 28 and Exhibits 31 and 32 showing bus operations during that period. Exhibit 32, for example, shows 1,233 adult and 211 children sightseeing passengers used the bus and limousine services of petitioner from June through October, 1960.

That petitioner operated both limousine and buses on and prior to March 22, 1961 in the conduct of its business was corroborated (Tr. 287-288, 386, 390-391). No evidence was presented by the parties in opposition to the application below.

B. The Commission Decision

The initial denial of the application was the Commission's order No. 334, served December 13, 1964. The findings adopted by the Commission, *inter alia*, that the transportation performed in buses was that of the owners of the vehicles and not that of petitioner; that petitioner was *bona fide* engaged in performing taxicab operations, i.e., for hire transportation in vehicles designed to carry eight passengers or less, not including the driver, as defined by Article XII, Section 2(b) (reproduced in the Appendix); that petitioner's operations were at the passengers' discretion, subject to change and not scheduled by petitioner; and that petitioner's application for a certificate of public convenience and necessity should be denied inasmuch as petitioner was, on March 22, 1961, engaged only in the performance of a taxicab operation.

A petition for reconsideration was filed and was denied by the Commission's order No. 343, served March 10, 1964, in which the Commission found that the petitioner was not *bona fide* engaged in bus operations on the effective date of the Compact inasmuch as (1) petitioner did not hold itself out to provide bus service, (2) the bus markings did not indicate that the buses were under the direction and control of petitioner and (3) the utilization of petitioner's guides on the buses was not persuasive that direction and control was in petitioner rather than the

owners of the vehicles; that petitioner was engaged in taxicab operations and that the carriage of more than six passengers, pursuant to Section 203(b)(2) of the Interstate Commerce Act in limousines was unlawful; that the transportation conducted was not performed under any color of right and therefore, was not *bona fide* or in good faith; and that the transportation was not scheduled but was at the passengers' discretion.

THE STATUTE INVOLVED

By joint resolution, Public Law 86-794, 74 Stat. 1031, as amended, Congress gave its consent to the State of Maryland, the District of Columbia and the Commonwealth of Virginia to effectuate the Washington Metropolitan Area Transit Regulation Compact. Contained therein, Title I, Article XII, Section 4(a) provides:

No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; *provided, however, that if any person was bona fide engaged in transportation subject to this Act, on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operations, and without further proceedings, if application for such certificate is made to the Commission within 90 days after the effective date of this Act. Pending the determination of such application the continuance of such operation shall be lawful.* (Italics added).

By this "grandfather" provision, Congress consented to the granting to the Commission the discretion, as pertinent, to judge (1) "*bona fide*" operation of an applicant on the effective date of March 22, 1961, and (2) the timely filing of an application.²

² The timeliness of filing is not here and has never been in issue. The final filing date of such applications was June 20, 1961. Commission records indicate that Holiday Tours, Inc., petitioner herein, filed its application on June 8, 1961.

STATEMENT OF POINTS

I. The Commission erred by considering (a) ownership of the buses utilized by petitioner on March 22, 1961 and (b) the holding or the lack of holding operating authority from Federal or State jurisdictions on March 22, 1961, in determining whether applicant was *bona fide* engaged in transportation pursuant to Article XII, Section 4(a) of the Washington Metropolitan Area Transit Regulation Compact.

II. The Commission erred in finding that the bus transportation service performed by petitioner on March 22, 1961 was not instituted and conducted in good faith.

III. The Commission erred in finding that control of the transportation service on March 22, 1961 was in the owners of the vehicles and not in petitioner.

IV. The findings of the Commission (a) that the bus transportation was not performed by petitioner, and (b) that petitioner committed deliberate violations of the Interstate Commerce Act are not supported by substantial evidence of record.

V. The Commission exceeded the provisions of Article XII, Section 4(a) of the Compact by adding the additional standard of fitness of the applicant, which standard was not contemplated by Congress in the Act.

VI. The Commission abused its discretion in (a) allowing intervention of three parties to the proceedings below, (b) in giving public notice of the application and (c) rejecting evidence of petitioner as to its operations subsequent to the effective date of the Act.

VII. By failing to apply the correct statutory standards of Section 4(a) of the Compact, as approved by Congress, the Commission denied petitioner substantive and procedural due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

SUMMARY OF ARGUMENT

I. The "grandfather" provision of Article XII, Section 4(a) of the Compact requires only that a person be *bona fide* engaged in transportation subject to the Act on the effective date of the Act. That section does not require that an applicant must have held specific operating authority from any jurisdiction prior to the Compact, nor does it preclude performing such transportation in leased rather than owned vehicles. The Commission, therefore, exceeded its authority under the statute by adding standards not contemplated by Congress.

II. Petitioner operated buses in its transportation business on and prior to the effective date of the Act. Petitioner did so openly and without concealment and was never stopped from so operating. Petitioner further attempted to comply with all state and federal laws while so operating. The Interstate Commerce Commission has held that where the operations were so conducted, without any element of pretense or disguise and in such a manner to indicate an intent to conduct the transportation business, then such operation is in good faith and *bona fide* meeting the requirement of the Act. *Slagle Contract Carrier Application*, 2 M.C.C. 127 (1937).

III. The Commission must concede that a transportation service was conducted. It is only as to the person who so conducted the operation which is in issue. Here, the Commission errs by failing to utilize the proper test laid down by the Interstate Commerce Commission and the Supreme Court of the United States in determining who was in fact the operator. The non-employment of the drivers, the lack of ownership of the vehicles and the failure to display the name of the applicant on the vehicles are not determinative of the question of who was the operator. *Thompson v. United States*, 321 U.S. 19 (1944). The proper test, and the one to use here, is whether the vehicles, while being used by petitioner, were under its direction and control as to such operations. *Dixie Ohio Express Co., Common Carrier Application*, 17 M.C.C. 735 (1939). *Thompson v. United States, supra*. Had the correct tests been used by the

Commission, a different result would have followed. This error must be corrected.

IV. The evidence of record conclusively demonstrates that the control of the operations in question was specifically denied to the owners of the vehicles and rested entirely in petitioner. If such direction and control were, in fact, in petitioner, then petitioner must, in law, be the operator. *Dixie Ohio Express, supra*. No evidence was presented to the contrary. There is, further, no evidence of deliberate violations of the Interstate Commerce Act, but, on the contrary, there was evidence of compliance with and every intent to comply with federal and state laws. Again, no evidence was presented to the contrary.

V. Section 4(a) of the Act does not impose the standard of fitness of an applicant, and the presiding officer at the hearing below so admitted. Fitness is a standard in a Section 4(b) proceeding (reproduced in Appendix C) which is not pertinent here. Had Congress wished that fitness be an element in Section 4(a) it would have so provided specifically as it did in the here irrelevant Section 4(b). Yet the Commission's orders under attack continuously refer to violations of the Interstate Commerce Act and, on this record, it can only be assumed that the decision was in part based on the alleged violations. Even if the violations did exist, the "grandfather" clause of Section 4(a) does not make compliance with laws of any jurisdiction a prerequisite to the receipt of operating rights under that clause. The same is true of the grandfather clause of Motor Carrier Act of 1935, 49 U.S.C. § 306, *Slagle Contract Carrier Application*, 2 M.C.C. 127 (1937).

VI. (A) Petitioner was prejudiced by the allowance of intervention of three parties to the hearing below in that such intervention was allowed without good or any cause shown, in direct violation of the Commission's own rules of practice and procedure (Rule 16). Oral motions for intervention are not even provided for in the Commission's rules. The improper intervention caused petitioner to present its direct case differently before the Commission below, and was therefore prejudicial.

(B) No public notice of the application below was given until 16 months following the filing of that application. No protest to the granting of the application other than a letter objection was received up to that time. Petitioner submits that the circumstances virtually invited additional protestants to the prejudice of petitioner.

(C) Certain exhibits were rejected in the proceeding below because they contained data immediately subsequent to March 22, 1961. Petitioner submits that such exhibits were improperly rejected and the Commission abused its discretion by sustaining the presiding officer's ruling in that such exhibits would tend to show the operations on the critical date. The statute provides for transportation *on* the critical date. It was arbitrary and without Congressional authority to determine that operations subsequent to the critical date were not admissible while those prior to the critical date were admissible. Other exhibits were rejected on the basis of hearsay even though those exhibits contained correspondence highly relevant and useful to the proceedings below. Quasi-judicial agencies are not held to strict rules of evidence and some flexibility should be allowed so that the public interest be served. *Montana Power Co. v. Federal Power Commission*, 87 U.S. App. D.C. 316, 185 F.2d 491, cert. den. 340 U.S. 947.

VII. In determining that petitioner was a "broker" or a "salesman" rather than the actual operator of the transportation service, the Commission decision precludes petitioner from engaging in bus transportation in any manner. The Act does not provide for a broker's license (accepting *arguendo* the Commission's reasoning). Therefore, petitioner could not, under the Commission's decision, engage in any transportation business involving carriage by buses. The inconsistency of the Commission is compounded by noting that the Commission, subsequent to the filing of the Petition to Review, obtained an injunction from the United States District Court for the District of Columbia forbidding the use by petitioner of buses which buses were, as on March 22, 1961, leased and not owned by petitioner. Apparently now the same operation is deemed to be that of

petitioner rather than the owners of the vehicles. It is submitted that the Commission has no statutory authority to preclude petitioner from engaging in business or divest it of a business in these circumstances. If the Commission's action is in accordance with the Act, then the Compact itself is improperly constituted to lead to such an arbitrary result. In any event, the record shows that petitioner was not accorded treatment consistent with the basic concepts of judicial tradition, which concepts apply also to quasi-judicial agencies. *Morgan v. United States*, 304 U.S. 1 (1938).

ARGUMENT

Before proceeding to the specific arguments, it must be noted that the basic and determinative issue in this case is whether petitioner was *bona fide* engaged in transportation subject to the Act on the effective date of the Act. Respondent Commission is without statutory authority to add any additional standard prerequisite to the granting of a "grandfather" application. As in the Motor Carrier Act of 1935, the "grandfather" clause here is a grant of statutory rights. *United States v. Carolina Freight Carrier Corp.*, 315 U.S. 475 (1942). Yet, these statutory rights were denied to petitioner when the Commission exceeded its statutory power by adding standards not contemplated by Congress, and was thus not in conformity with the Act. This Court noted in *American Airlines v. Civil Aeronautics Board*, 97 U.S. App. D.C. 324, 231 F.2d 483:

. . . when the reviewing authority of the courts is properly invoked it becomes our duty to inquire whether the action of the agency has "warrant in the record" and "a reasonable basis in law". This is particularly pertinent in the instant case since it is contended that the findings of the Board did not conform to requirements of the exemption section of the Act. 97 U.S. App. D.C. 327.

Thus, the specific arguments *infra* must, and will, show that the Commission's misconception of the statutory mandate and the pertinent law lead to an erroneous result, not consistent with Congressional intention, which result must be reversed.

I.

The Commission Erred by Considering (a) Ownership of The Buses Utilized by Petitioner on March 22, 1961 and (b) the Holding or the Lack of Holding Operating Authority From Federal or State Jurisdictions on March 22, 1961, In Determining Whether Applicant was *Bona Fide* Engaged In Transportation Pursuant to Article XII, Section 4(a) of The Washington Metropolitan Area Transit Regulation Compact.

Petitioner, as the applicant below, did not on March 22, 1961, hold operating authority from the State of Maryland, the District of Columbia, or the Commonwealth of Virginia. It further did not own, but rather leased buses for use in its transportation business. The Commission's orders under attack make much of both points and in part, the Commission bases its decision on them in concluding that petitioner was not the operator and was not therefore, "engaged in transportation."

Mere ownership of the vehicles utilized has never been a controlling factor as to who is, in legal contemplation, the operator of the vehicles. In *Thompson v. United States*, 321 U.S. 19 (1944), it was developed that the grandfather applicant was not the owner of the vehicles which were utilized to perform the transportation in question. Yet, the United States Supreme Court, aside from noting it as a point of fact, did not even utilize the factor of ownership in determining that the transportation was performed by the grandfather applicant.

In *Calvin v. United States*, 44 F. Supp. 684 (1942), the District Court for the Eastern District of Missouri stated:

The fallacy of plaintiff's reasoning lies in the inaccuracy of his conclusion that to be a "carrier" within the meaning of the Motor Carrier Act, 49 U.S.C.A. § 301 et seq., it is necessary that the transportation company actually own its own vehicles. The Act makes no such requirement. (44 F. Supp. 685).

The Act under consideration likewise makes no such requirement.

Moreover, the leasing of vehicles has long been accepted by the Interstate Commerce Commission as a normal and lawful course of business.³ In this connection, it should be noted that the Interstate Commerce Act speaks in terms of not vehicles owned, but of those "owned, leased, controlled, or operated." (See 49 U.S.C. 5(10) for example).

As to the prerequisite, seemingly set up by the Commission, of holding a certificate or permit of operating authority from a federal or state jurisdiction, this in no way is synonymous with being "engaged in transportation." Most importantly, the Act makes no mention of such a prerequisite. Had Congress wished to provide for such a standard it would have so stated.

Secondly, the Commission admits, in Order No. 334 (Sheet 8), that prior to the Compact, one could engage in irregular route sightseeing operations in the District of Columbia and in the State of Maryland simply by purchasing the proper license plate. This petitioner did (Tr. 69, 72).

Thirdly, assuming *arguendo* that petitioner was operating without proper authority and not in compliance with state law, still this is not necessarily a bar to the granting of a grandfather application. In *Alton R. Co. v. United States*, 315 U.S. 15 (1942), the Supreme Court stated:

Congress has not however conditioned the rights under the "grandfather clause" on compliance with state laws. Their violation is material only insofar as it may be relevant to establishing an absence of bona fide operation. Infraction of state law, however, may be innocent or willful, minor or considerable. They may or may not concern the right to operate in the state. Furthermore, the status of the carrier under state law may or may not be identical with the status as a common or contract carrier under the Motor Carrier Act. The question whether his operation in a particular state was "bona fide" is a fact for the Commission to determine. Such operation

³ Title 49 Code of Federal Regulations Part 207.

might well be in good faith though state laws were infacted. And the fact that an applicant may have to make his peace with state authorities does not necessarily mean that his rights under the "grandfather clause" should be denied or withheld. 315 U.S. 24.

The Interstate Commerce Commission has also held that the fact that an applicant under the "grandfather clause" has not complied with state laws is not sufficient to bar its rights to authority under that provision of the Act. *Slagle Contract Carrier, supra.*

In *Germenko v. Public Service Commission*, 173 A.2d 362 (1961), the Court concluded that *bona fide* operations mean actual and not lawful operations.

It should be clear that a prerequisite of a certificate or a permit of operating authority simply does not exist. Had the Congressional intent been otherwise, Congress would have so expressed.

While an administrative construction is entitled to great weight the administrative agency may not finally determine the limits of its statutory power. *Brannan v. Stark*, 87 U.S. App. D.C. 388, 185 F.2d 871, Aff. 185 U.S. 451.

By the setting up of additional standards not contemplated by Congress, the Commission has exceeded its authority under the statute in this case and must be reversed.

II.

The Commission Erred in Finding That the Bus Transportation Service Performed by Petitioner On March 22, 1961 Was Not Instituted and Conducted in Good Faith.

The Commission further erred by finding that the bus transportation service performed by petitioner on March 22, 1961 was not instituted and conducted in good faith.

The Interstate Commerce Commission in *Slagle Contract Carrier, supra*, with regard to "good faith", stated at 2 M.C.C. 142, that:

We are clear that one purpose of the use of the words "bona fide operation" was to deny rights under the "grandfather" clauses to those who, with knowledge of the pending legislation, should make a show of commencing operations, not in pursuance of any well conceived plan of furnishing transportation service, but for the purpose of thereby securing rights to operate having in themselves a money value. The words may properly be given an even broader application to exclude operations conducted surreptitiously or in disguise or involving some other element of pretense or concealment for the purpose of preventing state authorities from having the opportunity of enforcing statutory requirements.

The question, as we see it, is one of fact rather than law. *Were the operations openly conducted, without any element of pretense, disguise, or concealment, and in such a manner as to indicate a real intent to conduct and maintain a transportation business?* Operations so conducted are "the bona fide operations contemplated by the act." Moreover, where applicant has established the fact of actual operations, not only conducted on the "grandfather" date but continuously maintained thereafter, we think that we may fairly assume that they were "bona fide", unless the contrary is shown. *In other words, a prima facie case has been established, and the burden is upon protestants having knowledge of the operations to produce for our consideration the evidence of lack of good faith.* (Italics added).

Based upon the instant record, it is beyond question that petitioner conducted sightseeing bus operations openly on and prior to March 22, 1961 and there was not an element of pretense, disguise or concealment. This is evident by the advertising of petitioner in all types of media, the conduct of its operations, and the use of buses obtained from various companies in the area on and prior to March 22, 1961. The entire attitude and activity of petitioner was to conduct a sightseeing transportation service in the Washington Metropolitan Area. In this context of facts, the operations of petitioner are *bona fide* operations as contemplated by the Compact and it must be so found and the contrary has not been shown.

The Interstate Commerce Commission accepted such a *prima facie* case in *Slagle*, and emphasized that the burden is upon the protestants to produce evidence of a lack of good faith. *The protestants and intervenors in opposition to this case adduced no evidence whatsoever.*

Moreover, Exhibits 5 and 6 were submitted to further demonstrate the good faith of petitioner in conducting its operations. Those exhibits were rejected under strict rules of evidence. The rejection was based on hearsay which should not apply in this proceeding. *Montana Power Co. v. Federal Power Commission, supra.*

Petitioner is at a loss to discover the basis of fact for the Commission's finding that petitioner's operations were not instituted and conducted in good faith. Because of the various advertising and the buses being obtained from other companies in the area and the actual operation itself, this operation could not and was not conducted with any concealment, disguise or pretense.

III.

The Commission Erred in Finding That Control of The Transportation Service on March 22, 1961 Was In the Owners of the Vehicles and Not in Petitioner.

The Commission holds that the transportation service in question was actually conducted by the owners of the vehicles from whom petitioner obtained its buses. At the very least, the Commission concedes that a transportation service was conducted. Someone then must be entitled to a grandfather certificate under Section 4(a) of the Act. The United States Supreme Court in *United States v. Rosenblum Truck Lines*, 315 U.S. 50 (1942), stated:

We think it clear that Congress did not intend to grant multiple "grandfather" rights on the basis of a single transportation service. . . [otherwise] the result would be to create in this case two services offering transportation to the public where there had

been only one on the "grandfather" date, without allowing the Commission to determine if the additional service was in the public interest. (315 U.S. 53, 54).

Surely, the Commission would not argue that each company which made its buses available to petitioner would be entitled to that impossible to define area of transportation over which its buses, under the control of petitioner, happened to be operating on the critical date. The answer is clear, the one transportation service was that of petitioner.

It was factually proven below that applicant controlled the buses which it leased, the driver, and the pattern of tour for which tickets were sold by petitioner. That control was so vested in petitioner is supported by the unrefuted facts of record (for example, Tr. 98-99). The law here is clear. If the vehicles, while being used by petitioner, were under its direction and control, petitioner, to such operations, is a common carrier by motor vehicle. *Dixie Ohio Express Co., Common Carrier Application*, 17 M.C.C. 735 (1939).

As to who is, in legal contemplation, the operator of the vehicle, the Interstate Commerce Commission has stated:

It must be noted, however, that the words "direction", "control", and "responsibility" are conclusions dependent upon the facts presented in each individual case. The question cannot be decided by the existence of any single factor such as the name used on bills of lading or displayed on the vehicles, the method of payment for the service performed or the terms of the agreement between the parties. The answer depends upon a full consideration of all the conditions connected with the transportation service.⁴

The test was approved by the United States Supreme Court in *Thompson v. United States, supra*. In *Thompson*, the "grandfather" applicant did not employ the drivers (as is the case here), did not own the

⁴ Boston and Maine Transportation Company Common Carrier Application, 34 M.C.C. 599 (1942), affirmed in Auclair v. United States, 72 F. Supp. 160 (1947).

vehicles (as is the case here), nor display its name (as is the case here). But the transportation in *Thompson* was found to be that of applicant's because of its rigid control over the movement and its retention of responsibility (as is the case here).

That the following elements of control are present in this proceeding is clear and the Commission's refusal to take such elements in consideration and to give ". . . a full consideration of all the conditions connected with the transportation service",⁵ is reversible error.⁶

IV.

The Findings of the Commission (a) That the Bus Transportation Was Not Performed by Petitioner, And (b) That Petitioner Committed Deliberate Violations of the Interstate Commerce Act Are Not Supported by Substantial Evidence of Record.

(1) The instant record is replete with testimony that when the buses were leased with drivers to petitioner, these drivers had absolutely no authority to conduct their own tours or to do what the customer requested (Tr. 99). These drivers were given specific instructions by petitioner as to the nature of the tour (Tr. 99), and had absolutely no authority to deviate from such instructions (Tr. 61-62).

(2) When petitioner did not utilize its own driver, as it did on occasion (Tr. 60), a licensed guide, employed by petitioner, was sent on the tour in order that the driver could become familiar with the petitioner's pattern of operation (Tr. 60, 62). Drivers of the lessor companies were specifically instructed as to the tour on each date (Tr. 61) with no authority to deviate therefrom (Tr. 61-62).

⁵ Boston and Maine, supra. 34 M.C.C. at 610.

⁶ It appears from the report of the Commission that ownership of vehicles is synonymous with control of the transportation. This is directly contrary to the applicable law. Calvin v. U.S., supra and Thompson v. U.S., supra. The Commission offered no judicial precedent upon which to base its decision nor did it offer any rebuttal to the Thompson case.

(3) The tickets sold were by petitioner and sold by it on an individual basis (Tr. 59).

(4) Petitioner held itself out to conduct the sightseeing and charter operations as described in the application and thereby assumed responsibility for the tour. Petitioner's advertising during this period, prior to and on March 22, 1961 indicates exactly this. The holding out of petitioner to perform the involved transportation is relevant and material and it was error not to consider it and to consider it as denoting direction and control. See *Frozen Food Express v. United States*, 219 F. Supp. 131 (1963).

(5) Contrary to the Commission's conclusion, petitioner's tours were operated on definite schedules (Tr. 392, 396 for example). The Commission's conclusion in this regard is not only contrary to the uncontradicted evidence but is contrary to human experience. Supposing that petitioner conducted tours for one person at a time, it would not seem extraordinary that, pursuant to the passenger's request, one item of interest might be substituted for a previously scheduled one. However, if such were the practice of petitioner, it would be foolish to pursue the application in view of the expense, time and money. The fact is that whether there were two passengers or 100 passengers, the scheduled tour could not be deviated from as indicated by one of the passengers. Such a practice is not only impracticable but, from a business standpoint, impossible. The business of the petitioner - his only business - revolves around the schedule of tours as set forth in Exhibit 1-C to the application below.

It is respectfully submitted that petitioner did in fact control bus transportation on March 22, 1961 and by virtue thereof was "bona fide engaged in transportation." This conclusion finds its basis in the evidence of record and in decisional law. There is nothing left for the Commission to decide.

V.

The Commission Exceeded the Provisions of Article XII, Section 4(a) of the Compact by Adding the Additional Standard of Fitness of the Applicant, Which Standard Was Not Contemplated by Congress in the Act.

The Commission further abused and exceeded its authority by basing in part its decision on the issue of fitness. The Act simply does not impose a standard of fitness of an applicant, and the presiding officer at the hearing below so admitted (Tr. 16). Fitness is a specific standard in a Section 4(b) proceeding which, of course, is not pertinent here. Had Congress wished that fitness be an element in a Section 4(a) application proceeding it would have so provided as it did in the here irrelevant Section 4(b).

The Commission states that petitioner was not engaged in *bona fide* operations in limousines carrying in excess of 8 persons because it was a "crass violation of the Interstate Commerce Act." By this very terminology, the Commission commits patent error in basing, in part, its denial on an issue of fitness.

The initial "grandfather" clauses of the Interstate Commerce Act⁷ do not make compliance with laws of any jurisdiction a prerequisite to receiving operating rights under that clause. *Slagle Contract Carrier*, *supra*. In *Slagle*, the Interstate Commerce Commission stated:

Having determined that "bona fide" as used in the Act does not mean that an operator must prove compliance with State laws in his operations, there remains for consideration the reasonable interpretation which is to be placed upon this language. The latin words "bona fide" mean "in good faith". Webster's New International Dictionary defines "bona fide" as "in or with good faith; without fraud or deceit; real or really; actual or actually; genuine or genuinely." As defined in Black's Law Dictionary,

⁷ 49 U.S.C. §§ 306, 309.

the words mean "in or with good faith; honestly; openly and sincerely; without deceit or fraud". The Supreme Court in *Ware v. Hylton*, 3 U.S. 199, 241, defined them as follows:

Bona fide is a legal technical expression; and the law of Great Britain and this country has annexed a certain idea to it. It is a term used in statutes in England, and in Acts of assembly of all the states, and signifies a thing done really, with good faith, without fraud, or deceit, or collusion, or trust. . .

It should be clear that (1) fitness of an applicant is not a standard to be utilized in a Section 4(a) proceeding, and (2) that even if certain violations did exist, this alone is not enough to bar a grant of operating authority under the "grandfather" clause.

VI.

**The Commission Abused Its Discretion in (a)
Allowing Intervention of Three Parties to the
Proceedings Below, (b) in Giving Public Notice
Of the Application and (c) Rejecting Evidence of
Petitioner as to Its Operations Subsequent to the
Effective Date of the Act.**

(A) Petitioner submits that it was not accorded fair treatment in the hearing below. Three parties, none of which filed a protest nor gave notice of its opposition, appeared at the hearing to oppose the application. Rule 16 of the Commission's Rules of Practice and Procedure specifically sets forth the requirements of intervention, namely, a written petition, with sufficient copies for service on parties of record, which will not be granted except on good cause shown.

No such petition was filed nor was any cause shown for the failure to file a protest. Yet, petitioner was faced with three additional parties causing petitioner to approach its case differently than what it had planned during the more than one year period in which the case was pending without formal protest.

The laxity of the Commission in violating its own rules worked to the prejudice of petitioner.

(B) The Act does not provide for public notice of a Section 4(a) application. Section 4(b), however, specifically provides for such public notice. Again, the Commission has used standards of Section 4(b) when it, after 16 months following the filing of the application, gave public notice of the application virtually inviting protests to it.

There is no basis, no statutory authority for the public notice technique utilized. No notice whatsoever was published prior to the first decision of the Commission in this matter. Protests were made to the application approximately 16 months after the application was filed, but were not made previously even though the application had been pending before the Commission for well over a year (Tr. 17).

Again, petitioner submits that it was prejudiced by the procedural techniques employed by respondent.

(C) Exhibits 8 through 22 and Exhibit 29 were rejected by the presiding officer, who was sustained by the Commission, on the ground that the Commission is only interested in what transpired on or before March 22, 1961. These Exhibits contain data subsequent to March 22, 1961 but on or prior to October 31, 1961. Petitioner's position was, and is, that evidence of operations for a portion of 1961 should be offered and accepted, which would show or tend to show operations on the grandfather date. The Act speaks in terms of "on March 22, 1961" and it was arbitrary for the Commission to simply decide that operations prior to March 22, 1961 were relevant while those operations immediately thereafter were not relevant. There is no statutory authority for such decision.

The carrier's entire operations during the grandfather period must be viewed as a whole. It is unlikely that Congressional intent was to require proof of operations only on the specific day, i.e., the effective day of the Act, and not, as in the normal course of business, operations immediately prior to the effective date and immediately thereafter. It is

respectfully contended that operations both immediately prior and immediately after the effective date would tend to show operations on the effective date of the Act. If the operations are not viewed as a whole, then, petitioner submits, this is arbitrary. Cf. *Frozen Food Express v. United States, supra.*

Next, the presiding officer rejected – and he was sustained by the Commission – Exhibits 5 and 6 showing correspondence between the Virginia State Corporation Commission and counsel for petitioner. These Exhibits were submitted to show that petitioner had made efforts to comply with the laws of the State of Virginia. However, they were rejected on the basis of hearsay. It is respectfully submitted that these Exhibits were relevant and had probative value in that the Commission bases its decision in part, upon the alleged lack of good faith of petitioner and alleged lack of compliance with state laws. This ruling is prejudicial to petitioner and is clear error for the hearsay rule is not applicable to administrative proceedings so long as the evidence is substantial and has probative value. *Montana Power Co. v. Federal Power Commission, supra.*

VII.

By Failing to Apply the Correct Statutory Standards
Of Section 4(a) of the Compact, as Approved by
Congress, the Commission Denied Petitioner
Substantive and Procedural Due Process of Law in
Violation of the Fifth and Fourteenth Amendments
To the Constitution of the United States.

The Commission has decided that, on the effective date of the Act, petitioner was not engaged in bus transportation. Rather, the Commission contends that petitioner was a "broker" or a "salesman" and merely provided or arranged for the transportation conducted by the owners of the vehicles. Interestingly, subsequent to the filing of the petition to review in this Court, on July 3, 1964 in a separate District Court action

(*Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, C.A. No. 1558-64) petitioner was temporarily enjoined from using buses. Petitioner's operation was the same then as it had been on the effective date of the Act, i.e., the buses were leased and not owned by petitioner. Therefore, the Commission has effectively divested petitioner of its business on wholly inconsistent grounds. Apparently, at the time the petitioner was enjoined from using buses, the Commission felt that petitioner was "engaged in transportation". Otherwise, would not the owners of the buses have to be enjoined?

Moreover, providing, for the sake of argument, that petitioner was in fact a broker or a salesman as the Commission contended in its decisions under attack, it is interesting to note that the Act does not provide for a broker's license in the Washington Metropolitan Area. Therefore, it must be assumed that petitioner could not be a carrier, could not be a broker, and could not be a salesman, but would have to give up that business in which it was engaged. There is no statutory authority for the divestiture of anyone's business under these circumstances.

The facts have been stated, and, in those circumstances, it should be clear that, by exceeding its authority, the Commission encroached upon the fundamental rights, privileges and immunities of petitioner. Congress delegated to the Commission the authority to regulate a certain class of transportation. It did not delegate condemnation powers to terminate a continuing and profitable business. In *Morgan v. United States*, 304 U.S. 1 (1938), it was stated:

The maintenance of proper standards on the part of administrative agencies and the performance of their quasi-judicial function is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purpose for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play.

Petitioner submits that it was not accorded fairness in the proceedings below and that, on inconsistent grounds, it was divested of a profitable business. No where can there be found authority for the Commission to take the inconsistent action it has, and the erroneous result of the proceedings below should be reversed.

CONCLUSION

It may be said, judging from the cases *supra*, that to entitle a carrier to a certificate under the grandfather clause relating thereto, where the carrier does not own its equipment, it must be shown that the carrier had some control over the equipment and directed the operations to such an extent as would make it responsible to the passengers and to the public for the operations. The clear question in this proceeding is whether the Commission followed the Congressional mandate in the Washington Metropolitan Area Transit Regulation Compact. That Compact provides only that, as pertinent here, the Commission make a determination as to (1) "bona fide" operation of an applicant on the effective date of March 22, 1961, and (2) the timely filing of the application. The timeliness of the filing of the application is not here an issue. Therefore, the only issue in this proceeding is whether the applicant was in *bona fide* operation on the effective date of March 22, 1961. Petitioner has demonstrated that the term "bona fide" may be applied to it for it was engaged in *actual* operation on March 22, 1961. This is all the Compact required. This is all Congress requires. There was no issue of fitness; there was no issue of whether applicant held a State or Federal certificate or permit of operating authority prior to March 22, 1961; there was no issue as to whether applicant owned the vehicles utilized in the transportation; there was only the issue of actual operation on March 22, 1961. This has been factually proven in that applicant retained direction and control over the transportation in question on the effective date of the Act.

The Commission admits that some transportation was indeed performed and that this transportation was, in part, conducted in buses. The law demands that whoever controlled and directed that transportation be entitled to a certificate under Section 4(a) of the Compact. It has been factually and lawfully proven that the petitioner was that person. No evidence whatsoever was offered in rebuttal in the proceedings below.

This Court is empowered to correct errors of law and, on remand, the Commission is bound to act on the correction, *F.C.C. v. Pottsville Broadcasting Co.*, 309 U.S. 134 (1940). It is respectfully submitted that the clearly erroneous decision of the Commission must be corrected so that petitioner be accorded justice under the applicable law.

WHEREFORE, based upon the above premises, it is respectfully prayed that this Court enjoin, set aside, and annul the orders of the Washington Metropolitan Area Transit Commission, served December 13, 1963 and March 10, 1964, in The Matter of Holiday Tours, Inc., Application No. 18, Docket No. 31; that the Court decree that petitioner is entitled to operating authority from the Washington Metropolitan Area Transit Commission as sought by application duly filed or, in the alternative, remand this proceeding to the Transit Commission for further hearing and disposition in accordance with the correct applicable law; and that the Court grant such other and further relief as may be lawful, just and proper in the premises.

Respectfully submitted,

LEONARD A. JASKIEWICZ

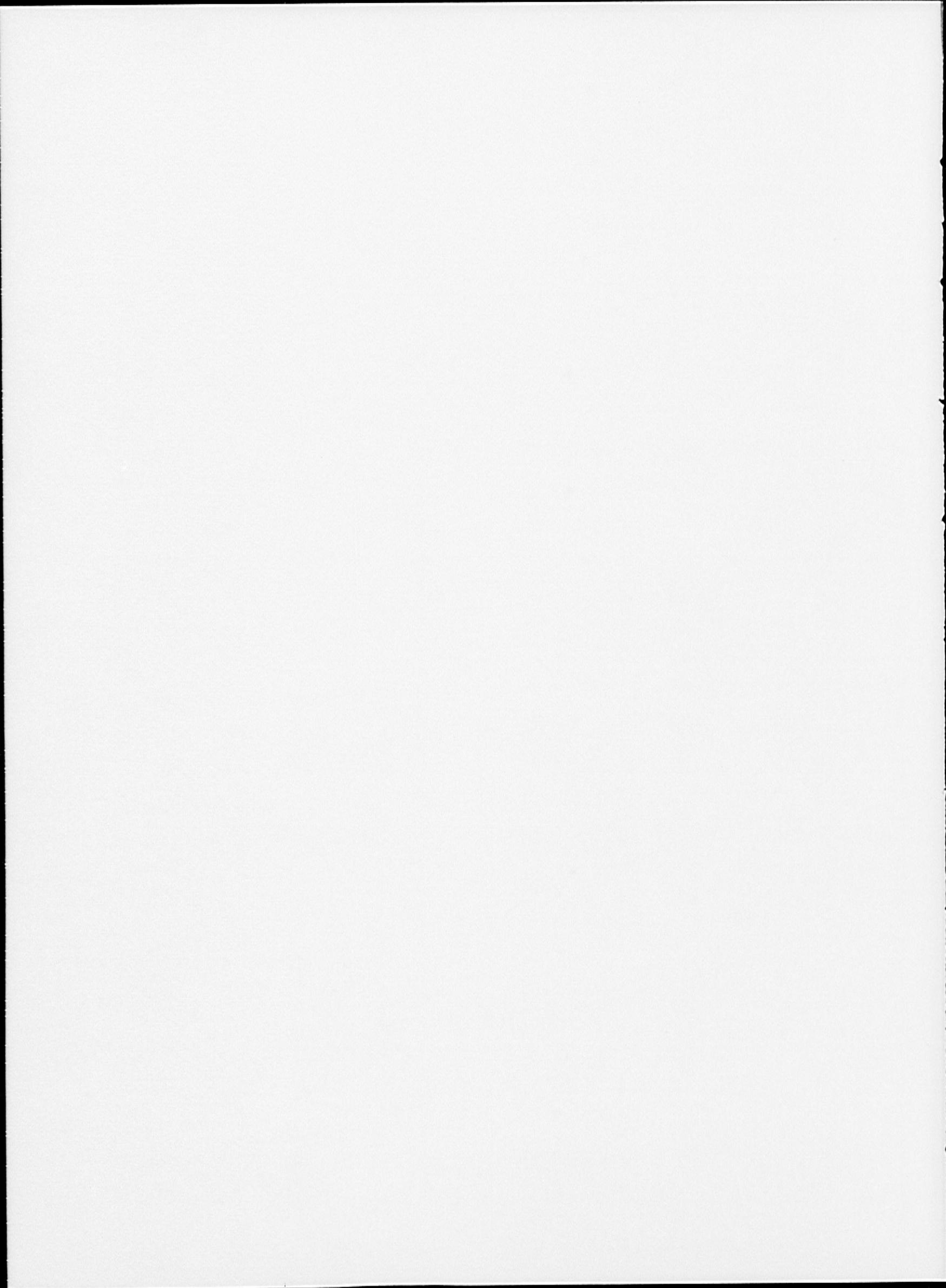
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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HOLIDAY TOURS, INC.,)
Petitioner,)
v.) No. 18,561
WASHINGTON METROPOLITAN)
AREA TRANSIT COMMISSION,)
Respondent.)

PETITION TO REVIEW AND SET ASIDE ORDERS
OF WASHINGTON METROPOLITAN
AREA TRANSIT COMMISSION

Comes now Petitioner, Holiday Tours, Inc., by its undersigned attorneys, and petitions the Court as follows:

1. This is a petition to review, enjoin, suspend and set aside orders of Respondent, Washington Metropolitan Area Transit Commission, served December 13, 1963, and March 10, 1964, made Appendices A and B respectively, and incorporated herein, arising out of the proceeding entitled *In the Matter of Holiday Tours, Inc.*, Application No. 18, Docket No. 31. This Court has jurisdiction by virtue of Title I, Article XII, Section 17(a) of the Washington Metropolitan Area Transit Regulation Compact, approved by Congress, Public Law 86-794, 74 Stat. 1031, as amended. The instant petition is filed pursuant to U. S. Ct. of App. D. C. Cir. Rule 38, 28 U.S.C.A.

2. Pursuant to the "grandfather" provisions of Title I, Article XII, Section 4(a) of the aforementioned Compact, Petitioner, Holiday Tours, Inc., of Bethesda, Maryland, duly filed an application to the Washington Metropolitan Area Transit Commission on June 8, 1961, seeking a certificate of public convenience and necessity to continue sightseeing and charter operations of,

Passengers and their baggage and special operations in round-trip sightseeing or pleasure tours and in charter operations,

Between all points in the District of Columbia, the Cities of Alexandria, Falls Church, the Counties of Arlington, Fairfax and political subdivisions of the State of Virginia located within those counties, and the Counties of Montgomery and Prince Georges in the State of Maryland and the political subdivisions of said State located within said Counties.

Passengers and their baggage and special operations in round-trip, sightseeing or pleasure tours and in charter operations (1) Between all points and places in the District of Columbia, and (2) Between all points and places within Montgomery and Prince Georges Counties within the State of Maryland and the political subdivisions of the State of Maryland located within said Counties.

STATEMENT OF ORIGINAL PROCEEDINGS

There was no publication of the filing of this application in any newspaper of general circulation, nor were any formal protests to the application filed by any party, for more than a year after filing.

3. By letter of the Executive Director of the Washington Metropolitan Area Transit Commission, dated September 29, 1961, together with attachment of proposed Certificate of Public Convenience and Necessity No. 4, Holiday Tours, Inc. was notified of the Commission's contemplated action in authorizing limousine operations to it, viz.,

Sightseeing operations by motor vehicles with a seating capacity of eight (8) passengers or less, exclusive of driver, between all points and places within the Washington Metropolitan Area Transit District, restricted, however, against intrastate operations in the Commonwealth of Virginia.

Applicant by letter dated October 3, 1961, advised the Commission that the interests of Holiday Tours, Inc. under its "Grandfather" application

extended beyond that proposed to be authorized and that it was its understanding that the proposed action was not final as to the entire application.

Thereafter, under date of October 6, 1961, the Executive Director advised the applicant that the proposed Certificate No. 4 was not all inclusive and the other requested authority would be given consideration by the Commission.

It is to be noted that under date of October 23, 1961, the A. B. & W. Transit Company, Inc. and The Gray Line, Inc. objected to the proposal of the Commission to issue Holiday Tours, Inc. a certificate of public convenience and necessity "authorizing sightseeing operations by motor vehicle with a seating capacity of eight (8) passengers or less, exclusive of driver, between points in the Washington Metropolitan Area Transit District, restricted, against intrastate transportation in the Commonwealth of Virginia."

On November 28, 1961, by letter of the Executive Director, applicant was advised that the Commission had reviewed the application of Holiday Tours, Inc. that was in addition to the proposed Certificate No. 4, and was

. . . of the opinion that there is not sufficient evidence of bona fide operations to warrant the issuance of additional authority.

The next step was an informal conference on July 3, 1962 held by the Commission staff with applicant's President and attorney. No minutes were kept concerning this meeting nor was any order or summary issued.

On August 15, 1962, Order No. 183 concerning Holiday Tours, Inc., Application No. 18 was served, in which the Commission concluded (1) that the transportation of Holiday Tours, Inc. performed in vehicles having a seating capacity of eight (8) passengers or less over irregular routes, non-scheduled, falls within the definition of a taxicab (Section 2(d), Article XII of the Compact), and (2) that Holiday Tours, Inc. was

not bona fide engaged in any type of bus transportation for-hire on the effective date of the Compact. The Commission also concluded that Holiday Tours, Inc. was bona fide engaged only in taxicab operations (as previously proposed by letter of September 29, 1961, with proposed Certificate No. 4), and the Commission denied the application.

Under date of September 14, 1962, Holiday Tours, Inc. filed a petition or application for reconsideration of Order No. 183 pursuant to Section 16, Article XII of the Compact, and Rule 28 of the Commission's Rules of Practice and Procedure.

No pleading in reply to this formal petition or application for reconsideration was filed by any party. A letter, however, on behalf of A. B. & W. Transit Company, The Gray Line, Inc. and Diamond Tours, Inc. indicated that these parties have a continuing material and pertinent interest in the disposition of the case, and "in the event of issuance of any form of order other than previously entered in this docket, will result in a demand for formal hearing for a determination of the issues."

On October 15, 1962, (thirty-one (31) days after the filing of the petition or application for reconsideration),¹ the Commission issued its Order No. 210 in which the Commission ordered as follows:

1. That Order No. 183 be, and it is hereby, cancelled set aside and held for naught.
2. That all matters in the file, except the original application and exhibits attached thereto be, and they are hereby, stricken and shall be removed from said file.
3. That notice of the application be given in a newspaper of general circulation in the Metropolitan District, said notice to state a general summary of the authority sought in the application, and requiring any person desiring to contest the grant of all or any portion of the authority sought to notify the Commission and the applicant, in writing, within thirty (30) days of the publication of said notice.

¹ Section 16, Article XII of the Compact requires mandatory granting or denying of the application within 30 days.

4. As soon as possible after the thirty-day period set forth above, the Commission shall proceed to process the application in accordance with its rules of practice and procedure and regulations.
5. That the application for reconsideration be, and it is hereby, dismissed.

The Commission in connection with the quoted Item 5 found that because of its proposed action the application for reconsideration became moot and should be dismissed (not either granted or denied).

On October 19, 1962, notice of the "grandfather" application was published in *The Evening Star* newspaper of Washington, D. C., and parties desiring to protest the grant of authority were required to notify the Commission and the applicant within thirty (30) days of the notice.

Such formal protests were filed by D. C. Transit System, Inc. and D. C. Transit System of Maryland, Inc., on October 26, 1962, and by Washington, Virginia and Maryland Coach Company, Inc., on November 5, 1962.

On November 28, 1962, Order No. 224 indicated that several protests to the application were received and that the Commission was of the opinion that hearing was necessary, and therefore, set the matter for hearing on January 22, 1963. The matter was continued until April 15, 1963 because of administrative functions of the Commission and at the request of counsel for applicant.

4. Hearing on the application was held in Arlington, Virginia on April 15, 16, 17, 1963 and May 9, 1963, before Russell W. Cunningham, General Counsel of the Commission as presiding officer. Appearances were made and accepted on behalf of protestants, W. V. & M. Coach Company, Inc., D. C. Transit System, Inc. and D. C. Transit System of Maryland, Inc. (Tr. 4, 6) and intervenors, The Gray Lines, Inc., A. B. & W. Transit Company, Inc. and Diamond Tours, Inc. (Tr. 5, 11).

5. On December 13, 1963, the Commission served its Order No. 334 finding that applicant was *bona fide* engaged only in performing

"taxicab" operations, i.e., vehicles having a seating capacity of 8 passengers or less in addition to the driver.² That order is attached as Appendix A.

6. Pursuant to the Commission's Rules of Practice, Petitioner here filed a petition for reconsideration of Order No. 334.

7. Order 343 was thereupon served by the Commission denying the petition for reconsideration and affirming the denial of the application in question. Order No. 343 is attached as Appendix B.

8. Petitioner then moved for a stay of Order No. 343 which was denied by Order No. 345 served March 13, 1964. A petition for reconsideration of Order No. 345 met with a further denial by Order No. 348 on March 20, 1964. A final petition to vacate, annul, declare void and set aside Orders Nos. 343, 345 and 348 was filed by Petitioner on the ground that these orders in no way indicate that the Commissioners themselves acted upon the petitions and motions of Holiday Tours, Inc. If the Commissioners did not do so, Petitioner argued that Title I, Article VI of the Washington Metropolitan Area Transit Regulation Compact was violated inasmuch as that Article requires a concurrence of a majority of the members of the Commission in any action of the Commission. That final petition was denied by Orders 353 and 355 served April 14 and 15, 1964, respectively.

9. The Commission's Orders Nos. 334 and 343 in Application No. 18, Docket No. 31, are erroneous and void for the following reasons:

- (a) The Commission action is contrary to the Washington Metropolitan Area Transit Regulation Compact, Title I, Article XII, Section 4(a) (Public Law 86-794, 74 Stat. 1031, as amended), in that petitioner was in fact engaged in *bona fide* operations on the critical date.

² Title I, Article XII, Section 1(c).

- (b) The Commission action is contrary to the intent of Congress in consenting to the Washington Metropolitan Area Transit Regulation Compact in that established carriers such as petitioner were the very ones intended to be protected by the "grandfather" clause.
- (c) The Commission action abuses and exceeds its discretion by misapplying and failing to apply the proper statutory standards to this proceeding in basing its decision, *inter alia*, on the issue of fitness.
- (d) The Commission action abuses and exceeds its discretion by misapplying and failing to apply the proper decisional standards to this proceeding in that it concluded that petitioner did not perform and/or hold itself out to perform the transportation as described in the application.
- (e) The Commission action is therefore arbitrary and an abuse of its administrative discretion.
- (f) The Commission action is contrary to the evidence of record in that it concluded the owners of leased vehicles, rather than petitioner performed the transportation.
- (g) The Commission action is unduly prejudicial to Petitioner and deprives him of his once vested property without due process of law. Furthermore, the report of the Commission is contrary to Section 8(b) of the Administrative Procedure Act.
- (h) Enforcement of the Commission's Orders of December 13, 1963 and March 10, 1964 will abrogate certain rights once held by Petitioner which rights constitute Petitioner's business and sole source of income and will unduly jeopardize the economic abilities of Petitioner without due process of law.

PRAYER

WHEREFORE, Petitioner prays:

1. That the United States Circuit Court of Appeals for the District of Columbia enjoin the effectiveness of the orders of the Washington Metropolitan Area Transit Commission served December 13, 1963 and March 10, 1964 in Application No. 18, Docket No. 31;

2. That upon consideration of the merits, such Court enjoin, set aside, annul and suspend those orders and decree that Petitioner is entitled to authority from the Washington Metropolitan Area Transit Commission as applied for;
3. That the Court direct the Washington Metropolitan Area Transit Commission to issue to Holiday Tours, Inc. a certificate of public convenience and necessity authorizing:

Passengers and their baggage and special operations in round-trip sightseeing or pleasure tours and in charter operations,

Between all points in the District of Columbia, the Cities of Alexandria, Falls Church, the Counties of Arlington, Fairfax and political subdivisions of the State of Virginia located within those counties, and the Counties of Montgomery and Prince Georges in the State of Maryland and the political subdivisions of said State located within said Counties.

Passengers and their baggage and special operations in round-trip, sightseeing or pleasure tours and in charter operations (1) Between all points and places in the District of Columbia, and (2) Between all points and places within Montgomery and Prince Georges Counties within the State of Maryland and the political subdivisions of the State of Maryland located within said Counties.

4. That the Court grant such other and further relief as may be lawful, just and proper in the premises.

Respectfully submitted,
HOLIDAY TOURS, INC.

/s/ Leonard A. Jaskiewicz

/s/ J. William Cain

Attorneys for Petitioner

APPENDIX B

Article XII, Washington Metropolitan Area Transit Regulation Compact, Pub.L. 86-794, 74 Stat. 1031

§ 17. (a) Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for the fourth circuit, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty (60) days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modication (sic) or setting aside of the original order. The court may affirm or set aside any such order of the Commission, and state the reasons therefor, and such judgment shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in §§ 239 and 240 of the Judicial Code, as amended (U.S.C. Title 28, §§ 346 and 347).

APPENDIX C

**Article XII, Washington Metropolitan
Area Transit Regulation Compact,
Pub. L. 86-794, 74 Stat. 1031**

§ 4. (a) No person shall engage in transportation subject to this Act unless there is in force a certificate of public convenience and necessity issued by the Commission authorizing such person to engage in such transportation; provided, however, that if any person was bona fide engaged in transportation subject to this Act on the effective date of this Act, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within 90 days after the effective date of this Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

(b) When an application is made under this section for a certificate, except with respect to a service being rendered upon the effective date of this Act, the Commission shall issue a certificate to any qualified applicant therefor, authorizing the whole or any part of the transportation covered by the application, if it finds, after hearing held upon reasonable notice, that the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations, and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise such application shall be denied. The Commission shall act upon applications under this subsection as speedily as possible. The Commission shall have the power to attach to the issuance of a certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require; provided, however, that no terms, conditions, or limitations shall restrict the right of the carrier to add to his or its equipment and facilities over the routes, between the termini, or within the territory specified in the certificate, as the development of the business and the demands of the public shall require.

APPENDIX D

**Article XII, Washington Metropolitan
Area Transit Regulation Compact,
Pub. L. 86-794, 74 Stat. 1031**

§ 1. (c) Notwithstanding the provisions of paragraph (a) of this section, this Act shall apply to taxicabs and other vehicles used in performing bona fide taxicab service having a seating capacity of eight passengers or less in addition to the driver thereof with respect only to (i) the rate or charges for transportation from one signatory to another within the confines of the Metropolitan District, and (ii) requirements for minimum insurance coverage.

§ 2. (d) The term "taxicab" means any motor vehicle for hire (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) designed to carry eight persons or less, not including the driver, used for the purpose of accepting or soliciting passengers for hire in transportation subject to this Act, along the public streets and highways, as the passengers may direct.

BRIEF FOR RESPONDENT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

FILED SEP 25 1964

Nathan J. Paulson
CLERK

No. 18,561

HOLIDAY TOURS, INC.,

Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,

Respondent.

Petition for Review of Orders of the
Washington Metropolitan Area Transit Commission

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QUESTIONS PRESENTED

1. Whether the Commission erred by considering (a) ownership of the bus-sized vehicles utilized and (b) federal and state laws relating to pre-compact operating authority in determining whether applicant was bona fide engaged in transportation pursuant to Article XII, Section 4(a) of the Washington Metropolitan Area Transit Regulation Compact, on the effective date of the Compact.

2. Whether the Commission erred in finding that (a) the bus transportation service was not instituted and conducted in good faith and (b) control of the transportation service was not by petitioner on and prior to March 22, 1961.

3. Whether the findings of the Commission (a) that the bus transportation service was not provided by petitioner (b) that petitioner had committed deliberate violations of the Interstate Commerce Act, and (c) that those operations in vehicles of eight passengers or less were taxicab operations, were supported by substantial evidence.

4. Whether the Commission utilized an additional standard of fitness and thereby exceeded the provisions of Article XII, Section 4(a) of the Compact.

5. Whether the Commission abused its procedural discretion in (a) allowing intervention of A. B. & W. Transit Company, The Gray Line, and Diamond Tours, Inc., (b) failing to give notice of designation of presiding officer, (c) giving public notice of the application and (d) rejecting evidence of petitioner as to its operations subsequent to the effective date of the Compact.

6. Whether the Commission failed to apply correctly the statutory standards of Section 4(a) and thereby denied petitioner substantive and procedural due process of law in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,561

HOLIDAY TOURS, INC.,

Petitioner,

v.

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION,

Respondent.

PETITION TO REVIEW ORDERS OF THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

BRIEF FOR RESPONDENT

COUNTER STATEMENT OF THE CASE

On September 15, 1960, the Congress of the United States gave its approval and consent to the District of Columbia and the States of Maryland and Virginia to enter into the Washington Metropolitan Area Transit Regulation Compact.¹ The Compact was executed on December 22, 1960, and became effective March 22, 1961. The purpose of the agreement was to transfer regulatory jurisdiction of the transportation of passengers for hire in the Washington Metropolitan District from the various state and the national regulatory commissions into one regulatory commission. It was the intent of the legislatures to preserve the existing transportation network -- not create new, or sanction unlawful, operations.

It is against this background that we turn to the instant proceeding. Holiday Tours, Inc., seasonably filed a "grandfather" application pursuant to Article XII, Section 4(a) of the Compact, seeking a certificate of public convenience and necessity to authorize transportation of passengers for hire in sightseeing and charter operations from any point in the Metropolitan District to any point in the Metropolitan District.

Following many procedural steps the Commission, on October 15, 1962, cleansed the file of the application and began to process the application de novo. Once this step had been taken, notice of the filing of the application was published by order of the Commission, which notice stated that any person desiring to protest the application should do so within a certain time period.

Protests to the application were rendered by several parties to this proceeding. Because of the conflict between the facts stated in the

1. P.L. 86-794, 74 stat. 1031.

application and the protests to the issuance of any authority to the applicant, the matter was referred to hearing in order to develop a record upon which the Commission could arrive at a decision.

At the beginning of the hearing, the examiner called for appearances. Protestants D.C. Transit System, Inc., D.C. Transit System of Maryland, Inc., and the W.V. & M. Coach Company, Inc., appeared. The A.B.&W. Transit Company, the Gray Line, and Diamond Tours, Inc., appeared by counsel, stating they were protestants. Applicant objected that protests by the latter companies had not been timely entered and participation should not be countenanced. The examiner upheld the objection, but allowed the parties to intervene, waiving the requirement that a motion to intervene be in writing. Another procedural objection was raised to the notice of the application requirement. The latter objection was overruled by the examiner. Both objections were considered, discussed, and rejected by the Commission (Order No. 334, pp. 3-5).

The record includes 600 pages of transcript and a total of thirty-six (36) exhibits were marked for identification; upon objection twenty-two (22) were rejected by the presiding officer and refused admission into evidence. Exhibits 1, 2, 3, 4, 7, 23, 24, 25, 26, 27, 28, 30, 31 and 32 were admitted in evidence. The Commission reviewed the rejected exhibits, the objections thereto, and affirmed the rulings of the presiding officer as being correct in every instance.

Factually, the evidence discloses that in 1957 Walter L. Davis originated a sightseeing operation. From then until November, 1959, the operation was conducted either as a sole proprietorship or as a partnership. In November, 1959, Holiday Tours was incorporated, with Davis as

president. The primary interest of Holiday Tours is related to the sightseeing industry. Its principal place of business was located in Bethesda, Maryland, just outside the District of Columbia (Tr. 24). It also had an outlet at the Fairfax Hotel in Washington (Tr. 27) which was a combination gift shop and outlet for sale of sightseeing tours. In addition, a saleslady was employed at the Holiday Inn, Arlington, Virginia. The applicant transported its passengers in limousines having a designed seating capacity of eight passengers or less, excluding the driver (Ex. 1, Tr. 479). On the effective date of the Compact, March 22, 1961, applicant had three Cadillac limousines licensed in the District of Columbia (Ex. 4). Holiday advertised its business in the yellow pages of the Telephone Directory for several years prior to the effective date of the Compact; however, none of these advertisements specifically offered transportation in buses, and in most instances stated that the tours would be conducted in limousines (Ex. 1-D). It also advertised by use of brochures which contained the various tours offered by the applicant (Ex. 1-C, Tr. 34 & 367). In addition to the tour offerings, the applicant would, if requested by a prospective passenger, offer its services on an hourly basis (Tr. 367). The applicant alleged that where the number of people to be transported exceeded their limousine seating capacity it would arrange a bus from one of the local bus companies (Tr. 366). A witness for the applicant, Thomas Parran, Jr., testified that he was the owner of the Suburban Transit Company and that in 1958 he had "rented" a bus to Mr. Davis and in 1959 he rented, either to Mr. Davis or to the applicant, buses on at least ten to twelve occasions. Further, Mr. Davis testified that he had secured the use of buses from Atwood's Transport

Lines in 1960 and the first three months of 1961. One of applicant's exhibits was a letter from the president of Atwood's to Mr. Delmer Ison, the Executive Director of the Commission, to the effect that it had "chartered" buses in 1960 to the applicant (Ex. 1). To support the claim that it had utilized bus equipment, Witness Davis testified from manifests prepared by him or other employees. These manifests purported to show the number of passengers handled each day and their point of origin. Based on these manifests, Mr. Davis attempted to show on what days the people were transported and how they were transported, i.e., bus or limousine. This was accomplished by grouping the number of people transported from various locations and, where they appeared, the names of various drivers utilized by applicant.

The protestants cross-examined extensively and argued that this was not proper evidence to prove the utilization of buses and that where in many instances the applicant had claimed a group or groups had been moved by bus, the same transportation could have been performed by the use of several limousines. This argument was borne out by the testimony of Mr. Davis that on some occasions more than thirty passengers had been transported by the use of three limousines running in relays; however, protestants offered no proof to bolster their argument. The protestants also took the position that the transportation provided by buses, especially where Atwood buses were utilized, was actually rendered by the carriers themselves and this had placed Holiday Tours merely in the position of a broker and salesman.

Based on these facts, the Commission issued Order No. 334, finding that the bus transportation was that of the duly authorized

common carriers, that the transportation of passengers in eight-passenger-or-less vehicles was taxicab operations as defined in Article XII, Section 2(d); and concluding that Holiday Tours, Inc., was not bona fide engaged in any transportation subject to the certificate requirement of Article XII, Section 4(a); and the application was accordingly denied.

Holiday Tours sought, and was granted, reconsideration. Upon reconsideration, the Commission issued Order No. 343, making additional findings and, modifying its previous order, affirmed the original decision. As the orders disclose, the transportation alleged by the applicant was subject to four regulatory laws; namely, the Federal Motor Carrier Act (Interstate Commerce Act), the laws of the District of Columbia, the State of Maryland, and the Commonwealth of Virginia. In the District of Columbia one could engage in irregular route sightseeing operations solely by purchasing the proper license plate. This was true also in the State of Maryland. In the Commonwealth of Virginia authorization from the Virginia State Corporation Commission was a prerequisite to operations. Under the Federal Motor Carrier Act such transportation required a certificate of public convenience and necessity from the Interstate Commerce Commission unless such transportation was exempt from the certificate requirements. Exemption was possible under two different sections of that Act; namely, Section 203(b)(8) (The Commercial Zone exemption whereby a carrier lawfully engaged in the intrastate transportation of passengers over the entire length of the interstate route involved, in accordance with the laws of each state having jurisdiction, did not need a certificate); secondly, under Section 203(b)(2) (exempting operations conducted in taxicabs or other motor vehicles performing a bona fide

taxicab service).

The Commission affirmed its prior finding that Holiday Tours was not bona fide engaged in bus operations. It classified the bus operation as being that of the common carriers, chartered by Holiday Tours to transport the people for whom it had arranged the transportation. The Commission recognized that the practice of limousine operators chartering buses is widespread throughout the industry. There is no evidence to prove that applicant held itself out to engage in bus service. None of its advertising makes this claim, nor did it attempt to secure the necessary certificates from the appropriate authorities. The buses utilized were marked and painted in the scheme of the common carriers and applicant posted no signs thereon to indicate that the buses were under its direction and control. The Commission said utilization of guides on vehicles driven by drivers unfamiliar with the wishes of Holiday Tours was not conclusive nor even persuasive when all the circumstances were considered.

The Commission placed little credence on the testimony that the Interstate Commerce Commission advised applicant that it did not need a certificate prior to rendering bus service. It found the Raymond Warrenner Application decision in 1958 (77 M.C.C. 213) and the A.B.& W. v. D.C. Transit System, Inc., decision in 1960 (83 M.C.C. 547) rendered such testimony entirely inconsistent with official decisions of the Interstate Commerce Commission. It concluded that the bus operations were charter services rendered by the common carriers, i.e., the transportation of persons arranged by someone (Holiday) other than the carrier.

The applicant's claim for a certificate was also predicated on the claim that more than eight passengers were transported in a single limousine. All this denoted was a crass violation of the Interstate Commerce Act. The pattern of operation of hundreds of one- and two-limousine sightseeing operators in the Metropolitan District had developed before it from numerous cases. All of these people, including Davis and Holiday Tours, were clearly performing transportation under the taxicab exemption clause of the Interstate Commerce Act. The Commission said that there were undiscovered violations was not surprising considering the number of small operators in this area and considering the magnitude of the Interstate Commerce Commission's responsibility. The vehicles of Holiday Tours were designed to seat no more than eight passengers. To honor and bless these violations with an unlimited certificate of public convenience and necessity would require stretching the term "bona fide" beyond a reasonable meaning. It did not believe that that term meant complete compliance with every law, but it certainly did not embrace a deliberate violation of the Interstate Commerce Act certificate requirements.

Applicant's operations by limousine prior to the effective date of the Compact were, the Commission said, obviously conducted under the exemption provision of Section 203(b)(2) of the Interstate Commerce Act. That proviso exempted operations conducted in taxicabs or other motor vehicles performing a bona fide taxicab service. That Commission held, in Motor Carrier Operations Between Washington, D. C. and Mount Vernon, Va., 51 M.C.C. 197, that the transportation of passengers in "so-called limousine-sightseeing vehicles" is a bona fide taxicab service. Any

transportation beyond the scope of that proviso was illegal, especially the carrying of more than six (6) passengers in one vehicle, not performed under color of right, and therefore not bona fide.

It found that Holiday's limousine operations came within the meaning of taxicab service as defined in Section 2(d) of the Compact. The so-called "scheduled" service admittedly was not rendered when there were no passengers seeking service and such service, when rendered, was at the request of prospective passengers. The applicant had not advanced any "color of authority" to justify its claim that it was "bona fide" engaged in operations other than taxicab service. Transporting more than six (6) passengers in one vehicle was illegal in interstate commerce and, having been given no legal basis for so doing, the Commission could not find that such transportation was "in good faith".

It also found that the applicant offered no evidence that it had engaged in intra-Maryland commerce. It further found that applicant had no authority to operate intrastate Virginia from the Virginia State Corporation Commission, nor was there evidence that it had engaged in intra-Virginia commerce.

STATUTES INVOLVED

In addition to Article XII, Section 4(a) of the Compact, which is set forth in petitioner's brief (p. 7), the following statutes are involved:

1. Article XII, Section 2(d), Compact:

"The term 'taxicab' means any motor vehicle for hire (other than a vehicle operated, with the approval of the Commission, between fixed termini on regular schedules) designed to carry eight persons or less,

not including the driver, used for the purpose of accepting or soliciting passengers for hire in transportation subject to this Act, along the public streets and highways, as the passengers may direct."

2. Article XII, Section 15, Compact:

"The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act. Such rules and regulations may prescribe the form or forms of all statements, declarations, applications, and reports to be filed with the Commission, the information which they shall contain, and the time within which they shall be filed. Unless a different date is specified therein, rules and regulations of the Commission shall be effective thirty (30) days after publication in the manner which the Commission shall prescribe. Orders of the Commission shall be effective on the date and in the manner which the Commission shall prescribe. For the purposes of its rules and regulations, the Commission may classify persons and matters within its jurisdiction and prescribe different requirements for different classes of persons or matters. All rules and regulations of the Commission shall be filed with its secretary and shall be kept open in convenient form for public inspection and examination during reasonable business hours."

3. Interstate Commerce Act, Part II, Section 203(b):

"Nothing in this chapter . . . shall be construed to include . . . (2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini; . . . (8) the transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the intra-state transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction;"

4. Virginia Code, Chapter 12, Article 2, Section 56-278:

"No common carrier by motor vehicle or restricted common carrier by motor vehicle not herein exempted shall engage in intrastate operation on any highway within the State without first having obtained from the Commission a certificate of public convenience and necessity authorizing such operation, and a statement of the State Highway Commission that the law applicable to the proposed route or routes has been complied with as to size, weight, and type of vehicles to be used, and a like statement as to any increase in size, weight, and type of vehicles proposed to be operated by the applicant after such application is granted." (1936, p 234; Michie Code 1942, Sec. 4097y(6); 1948, p. 976.)

SUMMARY OF ARGUMENT

I. In determining the bona fideness of petitioner's alleged transportation, the Commission correctly considered (a) ownership of the bus-sized vehicles to be relevant and material evidence, especially where the vehicles were owned by common carriers actively engaged in the same transportation, and (b) relevant federal and state laws and the extent of compliance therewith.

II. The Commission's findings and conclusions that (a) the bus transporation was not instituted and conducted in good faith and that (b) the bus transportation was by the common carriers are supported by substantial evidence.

III. The Commission did not utilize a fitness standard. Consideration of compliance, or the lack thereof, with existing law as an element of term "bona fide" was proper and material. To ignore wrongdoing would be to ignore and misapply the statutory standard. The term "bona fide engaged" is not restricted to the narrow element of actual

operations.

IV. The procedural decisions to (a) give notice of the application, (b) allow intervention of A.B.& W.Transit Company, Gray Line, and Diamond Tours, Inc., and, (c) reject evidence developed subsequent to the effective date were legally correct and not an abuse of agency discretion; but even if erroneous, they were harmless and did not result in substantial or prejudicial harm to petitioner.

V. The Commission correctly applied the statutory standard of Section 4(a). Petitioner was afforded substantive and procedural due process.

ARGUMENT

As this is the first decision of the Transit Commission relating to "grandfather" applications to come on for judicial review, it should be noted that in enacting the Compact the legislatures were not attempting to create a regulated industry out of a previously unrestricted business. Thus, the situation is unlike that confronting the Interstate Commerce Commission when the Motor Carrier Act was created. As there was no regulation of interstate motor carriers prior to the creation of the Motor Carrier Act, those applying for "grandfather" rights before the Interstate Commerce Commission could not produce certificates of public convenience and necessity as evidence of existing rights. While the "grandfather" provisions of the Compact and the Motor Carrier Act are similar, the difference in circumstances requires the Commission to render its own interpretation of the Compact "grandfather" clause. The Transit Commission is not required to "parrot" previous Interstate Commerce Commission decisions and judicial holdings thereon. This was recognized by the United States Circuit Court of Appeals for the Fourth Circuit, a sister Court of this Court, which exercises concurrent jurisdiction for review of orders of the Transit Commission. That Court said:

"The creation of the transit commission was one of the steps taken by Congress in the realization that regulation of mass transit in a large metropolitan area requires solutions specifically tailored to the area's special needs. It is, therefore, to be reasonably expected that the transit commission, in the exercise of its administrative functions, may establish regulations and a body of case-by-case decisions that will differ from those of public bodies regulating transportation. For example, it cannot be expected that the transit commission will necessarily determine the requirements of 'public convenience and necessity' in relation to mass transit in the Washington metropolitan area to be the same as would either the Interstate Commerce Commission or the local commissions previously involved

in regulating various aspects of this traffic. The impact of rules and decisions of such public bodies as 'stare decisis' for the present transit commission is, therefore, limited. These decisions, and those of reviewing courts, may aid in the search for the meaning of a statutory phrase and, perhaps, help point up the outer limits of administrative discretion; but they cannot generally be used to show the path the transit commission must follow" A.B.& W.Transit Company v. Washington Metropolitan Area Transit Commission, 323 F. 2d 777, 51 PUR 3d 292, 294.

The path it followed is set forth in the Counter Statement of the Case. The correctness of its footsteps will now be argued.

I.

IT WAS PROPER FOR THE COMMISSION TO CONSIDER (A) OWNERSHIP OF VEHICLES AND (B) RELEVANT FEDERAL AND STATE LAWS

A. Ownership of Bus Vehicles. It was not error to consider ownership of the buses. Ownership, standing alone, is not controlling. But, tied in with other factors, can be extremely material and relevant evidence. For example, had the petitioner owned the vehicles which performed the bus service, a different picture would appear. This would be true, to a lesser extent, had it leased vehicles from non-carrier sources. However, these are indices of the other side of the coin. The side presented to the Commission was that the vehicles were owned -- and driven -- by common carriers authorized to perform the transportation.

The significant issue here is petitioner's claim that it was error even to consider ownership (emphasis supplied). Such an argument is without merit. No precedent is cited for such an extreme proposition. The Commission neither stated nor intimated that ownership is a mandatory element. The Interstate Commerce Commission has considered ownership as relevant evidence in many "grandfather" cases.

Southern Shippers, Inc., "Grandfather" Application; No. MC 118222 (1961);
15 Fed. Carr. Cas. par. 35,327; N.E.Rosenblum Truck Lines, Inc., Contract Carrier Application; No. MC 13853 (1940), 2 Fed. Carr. Cas. par. 7540, affirmed United States v. Rosenblum Truck Lines, Inc., 315 U.S. 50, 3 Fed. Carr. Cas. par. 80,014.

In some cases, ownership might not be a substantial element, entitled to little if any weight, especially where the question as to who performed the transportation was not an issue. But that issue is the very core of this proceeding. Therefore, such evidence is material and relevant, and it was proper to consider it.

B. Pre-Compact Federal and State Regulatory Laws. Here again, the significant issue is petitioner's claim that it was error even to consider federal and state laws applicable to the transportation of passengers for hire. No precedent is cited for this proposition. However, it has cited a case contrary to its very own argument. In Alton R. Co. v. U.S., 315 U.S. 15, the Supreme Court said:

"Congress has not however conditioned the rights under the 'grandfather clause' on compliance with state laws. Their violation is material only insofar as it may be relevant to establishing an absence of bona fide operation. Infraction of state law, however, may be innocent or willful, minor or considerable. They may or may not concern the right to operate in the state. Furthermore, the status of the carrier under state law may or may not be identical with the status as a common or contract carrier under the Motor Carrier Act. The question whether his operation in a particular state was 'bona fide' is a fact for the Commission to determine" (emphasis supplied). 315 U.S. 24.

Certainly, compliance or non-compliance of some laws would be clearly immaterial in considering the bona fideness of a claim. "We

do not believe that that term (bona fide) means complete compliance with every law" (Order No. 334, p. 10). In this instance, however, the laws considered by the Commission were the very basis of the right to operate prior to the effective date of the Compact. Thus, consideration of these regulatory laws was obligatory upon the Commission.

In the Slagle case, the relevancy of the state laws was of a minor consideration. There, the Interstate Commerce Commission was dealing with the effect of state laws upon interstate operations. Here the bulk of the transportation was interstate operation, as the Commission found no evidence of intra-Maryland or intra-Virginia transportation (Order No. 334, p. 10), and such interstate operations were unlawful unless pursuant to a certificate, or exempt. This was a factor which the Interstate Commerce Commission did not have to consider. Slagle Contract Carrier Application, 2 M.C.C. 127 (1937).

II.

THE COMMISSION'S FINDINGS THAT (A) THE BUS SERVICE WAS PERFORMED BY THE COMMON CARRIERS, (B) THAT PETITIONER DID NOT BONA FIDE INSTITUTE OR CONDUCT ANY BUS SERVICE, AND (C) LIMOUSINE SERVICE WAS TAXICAB OPERATIONS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE

Substantively, two basic factors are at issue. First, was the petitioner engaged in any transportation subject to the certificate requirement of the Act, and, if so, was it bona fide?

A. Bus Service Rendered by the Common Carriers. While the testimony of petitioner's President (Witness W. L. Davis) set forth conflicting claims, it was the view of the Commission that the occasional bus service was rendered by the common carriers. Davis testified that

he operated a limousine sightseeing service. When he had sold more tickets than he could handle in limousines, he chartered a bus from a common carrier. The passengers carried in limousines were insured by petitioner. When they were carried in the common carrier buses, they were insured by the common carrier (Tr. 149-150). Employees of the carriers operated the buses (Tr. 153). Sometimes petitioner would place a guide aboard a bus to lecture to the passengers (Tr. 155-156) or to show the driver where the bus petitioner had chartered should go. While petitioner claims the buses were leased, Davis was asked if petitioner had ever entered into a lease agreement. He gave a negative reply and agreed that he "just called up and chartered a bus". Bus service in 1960 was rendered exclusively in buses of the Atwood's Transport Lines, Inc. Exhibit 1 was a letter from that common carrier stating that its buses had been "chartered" by petitioner. The word "charter" is a word of art² in the transportation industry and has a completely different meaning and connotation than the word "lease". Petitioner did not present a witness from Atwood to show that the word "charter" was intended to have a meaning other than its normal usage.

An Interstate Commerce Commission decision in 1961 involved a "grandfather" application that used "leased" equipment. Protestants contended that applicant had failed to show that it was common carrier because it did not exercise direction and control over operations in

2. "'Charter service', as that term is used in the Act, contemplates the transportation, as such, of groups assembled by someone other than the carrier, . . . which collectively contracts for the exclusive use of certain equipment for the duration of a particular trip or contract." Liederbach Common Carrier Application, 41 M.C.C. at 597 (1942).

leased equipment. That Commission disagreed, stating:

"A 'grandfather' applicant which uses leased equipment must establish that the operations were under its complete control and direction, with full responsibility to the general public as well as the shippers. Whether a company which is providing transportation service is a motor carrier entitled to operating authority must depend upon the particular facts presented. Here applicant used certain forms in its business which apparently indicate that it did not exercise the requisite responsibility. The record shows, however, that applicant did, in fact, exercise complete direction and control over the leased equipment, and that it has sustained its burden of proof that it is a common carrier. This conclusion is based upon the following pertinent facts: (1) applicant paid the federal transportation tax, (2) it provided the insurance, (3) it holds State-operating authority, (4) it owns a portion of the equipment which is used, (5) its name appears on the equipment, (6) owner-operators are employees of applicant and are not permitted to work for anyone else, (7) they are not liable for damage, and (8) owner-operators are required to submit log sheets and trip reports to applicant." Southern Shippers, Inc., "Grandfather" Application; supra.

The petitioner did not meet a single one of these factors.

This evidence was countered only by Davis' testimony that petitioner exercised control over the bus service. Considering the entire record, the substantiality of evidence supports the decision. Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474 (1951).

B. Instituting and Conducting Bus Service in Good Faith. The finding of the Commission that the bus transportation was that of the common carriers leaves little to be argued on this question.

Assuming, arguendo, that petitioner is correct in claiming that it was "engaged" in bus transportation, it was not bona fide instituted and conducted.

The Commission took "judicial" notice of the Interstate Commerce Act and the states' regulatory laws. It is significant that not once does petitioner acknowledge the existence of the federal law. Indeed,

it conspicuously avoids it. See the first sentence of its Argument I, page 13 of its brief, where it acknowledges that it did not have operating authority from the state agencies. No mention is made of the lack of operating authority from the Interstate Commerce Commission. Not once is it candid with this Court and admit that the transportation it alleges it was engaged in would have been illegal.

The burden of proving bona fideness is on the applicant. The only evidence offered by petitioner to show good faith in beginning a regulated business is that Davis stated he had been told that he could operate under the Commercial Zone exemption, that he had talked to a representative of the Interstate Commerce Commission and the Virginia State Corporation Commission. The Commission placed "little credence" on the testimony (Order No. 343, page 2) in view of decisions of the Interstate Commerce Commission in 1958 and 1960, saying such testimony "was entirely inconsistent with official decisions . . ." The Commission also found that transporting "more than six passengers in one vehicle was illegal in interstate commerce, and, having given no legal basis for so doing, cannot now claim that such transportation was "in good faith" (Order No. 343, p. 3).

Nor was petitioner's alleged bus transportation open and unconcealed. With the exception of a brochure (whose date of printing was never established), none of petitioner's advertising indicated a holding out to engage in bus operations. To the contrary, all of its ads in the telephone yellow pages offered limousine service (Ex. 1-D). The conduct of operations in common carrier equipment precluded regulatory surveillance. Not until long after the effective date did petitioner identify any bus equipment as its own. The Commission concluded that

this evidenced a lack of good faith. In other words, a *prima facia* case was established showing a lack of bona fideness.

C. Limousine Service Was Taxicab Operations. The only lawful interstate operations were under the taxicab exemption, Section 203(b)(2). The "tours" were not scheduled, nor over regular route, and performed after agreement reached with the passenger.

III.

CONSIDERATION OF COMPLIANCE WITH PRIOR REGULATORY LAWS IN DETERMINING BONA FIDENESS WAS PROPER AND DID NOT CREATE A STANDARD OF FITNESS

There is no specific discussion of "bona fide" in the legislative history of the Compact. However, it is crystal clear that what was intended was a consolidation of functions from several commissions into one commission. In testifying before the House Judiciary Committee, Virginia State Senator Fenwick stated, "Actually, the intent of this (Compact) was simply to substitute the powers that are now enjoyed by four different agencies and put them into one. We are not creating any new power, but we are simply putting them into one and it is limited to a regulatory body to administer the routes and rates. That is all . . . that is correct; with no intent for this to affect labor, or to create any new rights."³

It is submitted that the term "bona fide" was used (1) because of its historical meaning and (2) to enable those operations legally exempted to become certificated as well as those for which operating

3. Hearings before Subcommittee No. 3 of the House Committee on the Judiciary, 86th Congress, 1st Sess. on H. J. Res. 402.

authority had been issued. The purpose of a "grandfather" clause, it has been held, is to insure substantial parity between future operations and past bona fide operations. Alton R. Co. v. U.S., supra. To call prior unlawful operations bona fide would be to reward a wrong doer and penalize those who lived within the law. The petitioner stresses throughout its argument that the test is one of actual operations only. If the legislature intended to so narrow the customary usage of the term bona fide, it is submitted, the term "actual" would have been used instead of "bona fide". To reject the Commission's interpretation would be to impugn a lack of knowledge of its own laws on the Congress of the United States. The criterion of bona fide operation is subjective. The operation must not have been one in defiance of law.

This Court in Montgomery Charter Service, Inc., v. Washington Metropolitan Area Transit Commission, U.S.App. D.C., 325 F.2d 230 (1963) had this to say about the "grandfather" clause: "The Commission shall . . . issue a "grandfather" certificate pursuant to Article XII, Section 4(a) authorizing such operation . . . as petitioner was legally and in good faith engaged in . . ." (Emphasis supplied).

"Occasional noncompliance with state laws does not per se establish a course of conduct which is preponderantly one of evasion." Alton R. Co., supra. Such a course of conduct may be fairly implied here and the Commission so found when it stated that the placing of eleven or twelve passengers in a vehicle designed to hold seven or eight was a deliberate violation of the Interstate Commerce Act taxicab exemption. There is absolutely no evidence to show that petitioner made any attempt to comply with the Federal regulatory law. That it attempted to

evade it is obvious. That it ignored it in the past, and would ignore it now, is apparent from the complete lack of discussion of that law in its brief. It claims not even saccharin "color of right".

IV

THE PROCEDURAL DECISIONS COMPLAINED OF WERE NOT AN ABUSE OF DISCRETION

It is claimed that the Commission abused its discretion when it (a) gave notice of the filing of the application; (b) allowed intervention of A.B.& W.Transit Company, Gray Line, Inc., and Diamond Tours, Inc.; and (c) rejected certain proffered evidence relating subsequent to the effective date of the Compact. These contentions will be discussed seriatim:

A. Notice of the Application. The Compact does not require notice of the filing of an application under Section 4(a). It is silent on the matter. Another section authorizes the Commission to perform any and all acts to carry out the provisions of the Act.⁴

The Commission Rules require newspaper notice in formal proceedings and where action by the Commission is required after notice and opportunity for hearing.⁵ The Commission had ordered notice be

4. Section 15: "The Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this Act."

5. Rule 6-03 of the Commission's Rules of Practice and Procedure states: "In formal proceedings, and where action by the Commission is required after notice and opportunity for a hearing, the Commission shall, in addition to other notice, give, or require to be given, general notice of the substance of the application, petition or complaint and the date or place of the hearing in a newspaper of general circulation in the Metropolitan District not less than twenty-five (25) days in advance of the date set for hearing or of the other action to be taken, unless by order the Commission provides for a shorter time."

given of the filing of all "grandfather" applications (Tr. 17-19).

Failure to give notice of the filing of an application and thereby deprive opportunity for those affected by it to contest the legitimacy of the applicant's claim may well have been a denial of due process to the contesting parties. However, whether their interest is a "privilege" or a "legal right", since the statute does not forbid notice, fairness dictates its usage -- it certainly is not an abuse of agency discretion. The Commission has the discretion when to require notice, where the act is silent. Interstate Broadcasting Co. v. Federal Power Commission, 323 F. 2d 797 (1963).

B. Intervention Allowed Interested Parties. On the first day of hearing, and before the taking of any testimony, three carriers noted their appearance and attempted to appear as protestants. Upon objection, the examiner refused to allow their appearance as protestants, but permitted them to appear as intervenors, waiving any written requirement of Commission Rule 16-02, which requires a petition to intervene to be in writing.

Waiver of the written requirement by the examiner did not substantially and prejudicially violate the agency's rule. Sangamon Valley Television Corp. v. U.S., 269 F. 2d 221, 31 PUR 3d 188 (1959). Good cause was shown -- a prior-filed protest had been set aside when the Commission cleansed the record and proceeded de novo (Tr. 7-8). The applicant had only one burden of proof to meet -- the substantiation of its claim. This, it already knew from the protests, would be scrutinized and tested. It is difficult to see how the number of protestants

could affect its presentation. There would not be an undue broadening of the issues. Additionally, the examiner offered applicant additional time if his ruling created a burden (Tr. 11) Montana Power Co. v. Federal Power Commission, 87 App. D.C. 316, 185 F. 2d 491, Cert. den. 340 U.S. 947. The intervening parties were authorized carriers and would have been affected by a decision on the application, thereby having a right to appeal for reconsideration (Article XII, Section 16, Compact). "Blind adherence to procedural rules is neither in the interest of justice nor the orderly conduct of any proceeding." (Order No. 334, p. 4). "An administrative agency is not a slave of its rules." Montana Power Co. v. F.P.C., supra, p. 239. "It is not disputed that one who may appeal may intervene." Seaboard and Western Airlines v. Civil Aeronautics Board, 86 App. D.C. 64, 181 F. 2d 515, 518, Cert. den. 339 U.S. 963, 70 S. Ct. 997 (1950). While prejudice is claimed, petitioner asserts no prejudice attributable to the alleged defect.

C. Rejected Evidence.

1. An exhibit (identified as No. 5) was offered by the applicant below. This document consisted of correspondence between counsel for the respondent, Mr. Jaskiewicz, and an official of the Virginia State Corporation Commission. Objection was made to the admissibility of the letters into evidence. The examiner offered to allow the letters signed by Mr. Jaskiewicz to be admitted, but refused the admission of uncertified letters allegedly signed by a Virginia official. Petitioner declined to separate the documents (Tr. 377).

2. An uncertified letter, identified as Exhibit No. 6, purporting to originate from the State Department of Assessment and

Taxation for the State of Maryland was similarly rejected.

These exhibits were rejected, as noted in petitioner's brief (p. 24), on the basis of hearsay. Petitioner claims that "these Exhibits were submitted to show that petitioner had made efforts to comply with the laws of the State of Virginia". This is analogous to taking a dog for a rabies shot after it has bitten someone -- them claiming a good faith attempt to comply with a vaccination law. Yet, counsel for petitioner during the hearing denied that this was the basis for submitting the documents (Tr. 376). The brief then goes on to argue that "the Exhibits were relevant and had probative value in that the Commission bases its decision in part, upon the alleged lack of good faith of petitioner and alleged lack of compliance with state laws". At this time, two dates focus into significance: March 22, 1961, and June 7, 1961. The Compact became effective March 22, 1961, and, for determining "grandfather" applications, is the last day on which one could qualify for a "grandfather" application. But here we have the petitioner claiming that it did attempt to comply with state laws in good faith. Does it offer proof that this was prior to March 22, 1961? No. To the contrary, it attempted to submit correspondence initiated on June 7, 1961, (Exhibits 5 and 6, denied admission into evidence, Tr. 377,378), two and a half months after the critical date. This indicates good faith? Of course not. It serves solely as a last gasp attempt to establish a service it had never rendered. However, it does serve an important function. It highlights the danger of receiving and placing reliance upon claimed evidentiary matter developed subsequent to the effective date.

The syllogistic reasoning is: This is what we do today. Ergo, we did it three months ago. It was for this reason that the examiner refused to admit testimony and exhibits pertaining to transportation subsequent to the effective date. Applicant's mode of operation could -- and did⁶ -- change drastically after the effective date. The line had to be drawn somewhere -- the legislatures drew it on March 22, 1964.

Further, since the best evidence available had been presented, i.e., relating to the period on or before March 22, 1961, the proffered evidence, since it would relate back, would merely be cumulative and immaterial.

V.

PETITIONER WAS AFFORDED SUBSTANTIVE AND PROCEDURAL DUE PROCESS

Petitioner stresses time and time again that the standard of Section 4(a) is "actual" operations. This is a plain emasculation of the term "bona fide". The Commission could not ignore the legal requirements of the pre-Compact regulatory laws.

Nor does the decision divest Holiday Tours of its business. The petitioner is free to sell to the extent of its ability. However, the Commission did refuse to allow it to create a new business. This was not the intent of the "grandfather" clause.

The petitioner has seen fit to go outside the record of this proceeding in an attempt to show inconsistency on the part of the Commission, by referring to the Commission's action in seeking and

6. Walter L. Davis, President of Holiday Tours, Inc., stated to this Court in an affidavit attached to a motion for stay (April 20, 1964) that his Company had purchased, and placed into operation, two buses.

obtaining a restraining order to enjoin petitioner from using buses. Its statement that "Petitioner's operation was the same then as it had been on the effective date of the Act, i.e., the buses were leased and not owned by petitioner", (p. 25) is simply not accurate.

On Page 2 of its Complaint, the Commission said:

"Since the denial of its application, Holiday Tours, Inc., has daily engaged in transporting persons for hire within the District of Columbia in vehicles having a seating capacity in excess of eight (8) passengers, excluding the driver, without a certificate of public convenience and necessity, which acts constitute violations of the Act, namely, Section 4(a).

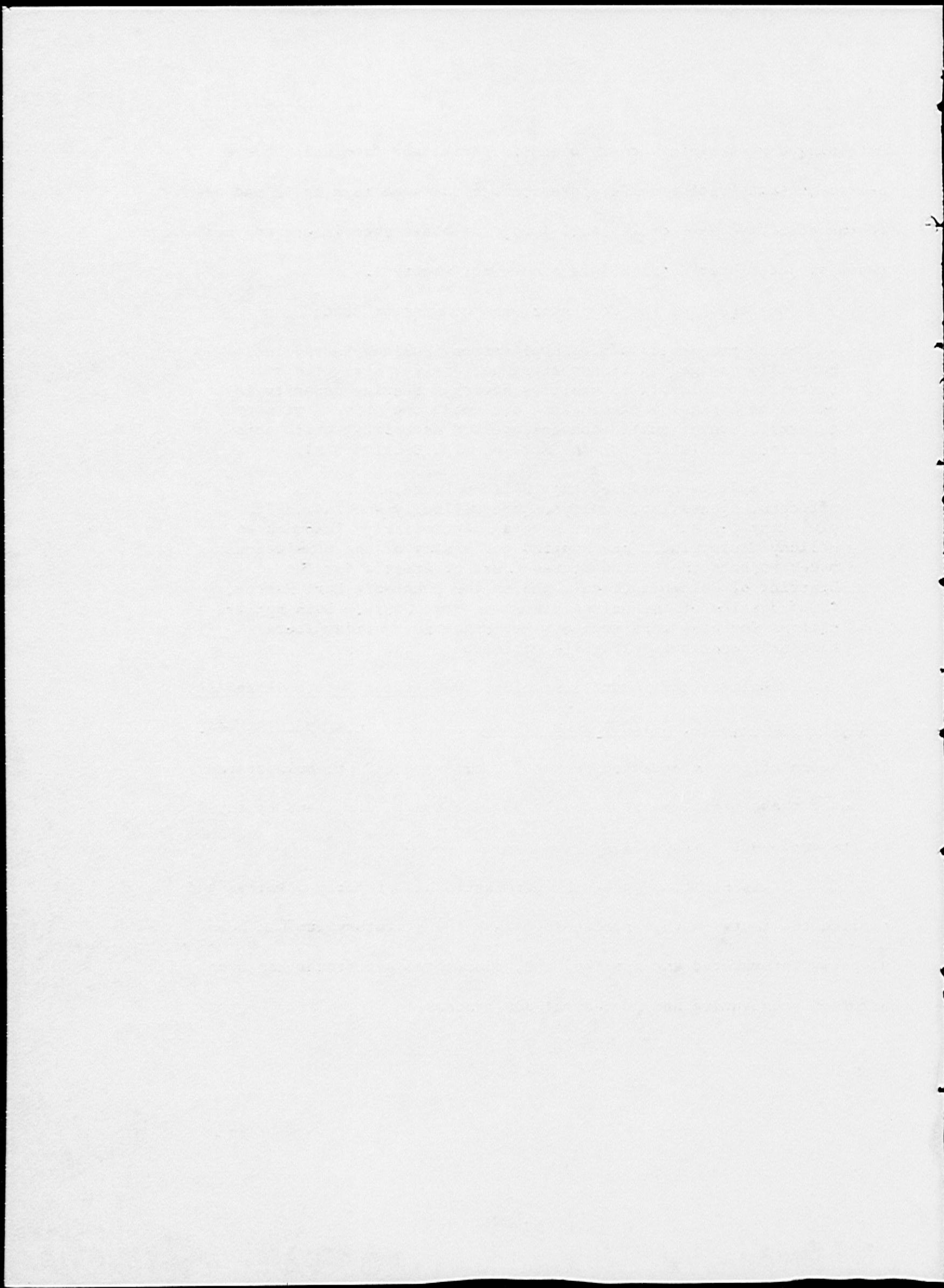
"It must be concluded that Holiday Tours, Inc., its officers, agents, and employees are willfully and knowingly violating the Act, and Section 4(a) particularly, inasmuch as Holiday Tours, Inc., has applied for a stay of the Commission's order to both the United States Court of Appeals for the District of Columbia Circuit and to the Honorable Earl Warren, Chief Justice of the United States Supreme Court. Both applications for stay were denied. Nevertheless, Holiday Tours blatantly continues daily its violation of the law."

Complaint for Injunctive Relief, Washington Metropolitan Area

Transit Commission v. Holiday Tours, Inc., D.C.D.C., C.A. No. 1588-64.

In a sworn affidavit attached thereto, Commissioner C. M. Duke stated: "Some of these vehicles are owned by Holiday Tours, Inc., and operated by its employees." (Page 2).

It is submitted that the Commission has properly obtained and applied the facts in this proceeding, that the statutory law has been properly interpreted and applied, and, therefore, petitioner has been afforded substantive and procedural due process.



CONCLUSION

The basic reason for a "grandfather" clause is to put one in the same position after the law becomes effective as it was in before the legislative enactment. This is the "substantial parity" spoken of by the United States Supreme Court. This is the effect of the Commission decision. Holiday Tours, Inc., on the "magic" date, was engaged in transporting sightseers in taxicab vehicles only. That was where the Commission found it and that is where it left it. This was its "actual" operations. This was its "bona fide" operations.

When petitioner's sales exceeded its ability, it chartered buses from authorized common carriers, who then performed the transportation. This procedure is still open to it. If Holiday Tours, Inc., wishes to legally get in the bus business, in its own right, it can file an application for a certificate of public convenience and necessity.

WHEREFORE, the premises considered, the respondent respectfully prays that the petition be denied and its orders affirmed.

Respectfully submitted

RUSSELL W. CUNNINGHAM

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General Counsel
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Attorney for Respondent
WASHINGTON METROPOLITAN
AREA TRANSIT COMMISSION

Dated: September 25, 1964.

O R D E R S

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WASHINGTON, D.C.
ORDER NO. 334

IN THE MATTER OF:

Served December 13, 1963

Application of Holiday Tours,)	
Inc., for a Certificate of)	Application No. 18
Public Convenience and)	
Necessity ("grandfather").)	Docket No. 31

APPEARANCES:

LEONARD J. JASKIEWICZ, Attorney for Holiday Tours, Inc.,
Applicant.

JOHN R. SIMS, JR. and HAROLD SMITH, Attorneys for D. C.
Transit System, Inc., and D. C. Transit System
of Maryland, Inc., Protestants.

MANUEL J. DAVIS, Attorney for the Washington, Virginia
and Maryland Coach Company, Inc., Protestant.

S. HARRISON KAHN, Attorney for Alexandria, Barcroft and
Washington Transit Company, The Gray Line, and Diamond
Tours, Inc., Intervenors.

BEFORE:

RUSSELL W. CUNNINGHAM, Presiding Officer.

Holiday Tours, Inc., seasonably filed a "grandfather"
application pursuant to Article XII, Section 4(a) of the Washington
Metropolitan Area Transit Regulation Compact ("Compact"), seeking
a certificate of public convenience and necessity authorizing such
transportation as it was bona fide engaged in on March 22, 1961,
the effective date of the Compact. The application specifically

seeks authority to transport:

Passengers and their baggage in special operations in round trip sightseeing or pleasure tours and in charter operations, between all points in the District of Columbia, the Cities of Alexandria and Falls Church, the Counties of Arlington and Fairfax and political subdivisions of the State of Virginia located within those counties, and the Counties of Prince Georges and Montgomery in the State of Maryland and the political subdivisions of said State located within said counties; passengers and their baggage in special operations in round trip sightseeing or pleasure tours and in charter operations (1) between all points and places within the District of Columbia, and (2) between all points and places within Montgomery and Prince Georges Counties within the State of Maryland and the political subdivisions of the State of Maryland located within said counties.

On August 15, 1962, the Commission issued Order No. 183 denying Holiday Tours a certificate of public convenience and necessity. This action was predicated on the application and attached exhibits and the results of informal conferences with the applicant's president. The applicant filed an application for reconsideration.

On October 15, 1962, the Commission, on its own motion, issued Order No. 210 in which it cancelled and set aside Order No. 183 and

cleansed the file of all papers except the original application and exhibits thereto. In addition, the Commission ordered that notice of the application be given in a local newspaper, and directed persons desiring to contest the grant of any or of all or any portion of the authority sought to notify the Commission and the applicant in writing.

This action was taken by the Commission in order that all interested persons, including the applicant, would have an opportunity to present all relevant facts to the Commission and that a record of this proceeding would thereby be preserved.

Protests to the application were filed by D. C. Transit System, Inc., and D. C. Transit System of Maryland, Inc., and the Washington, Virginia and Maryland Coach Company, Inc., (W.V. & M.).

Thereafter the Commission set the matter for hearing.

Hearing on the application was held on April 15, 16, 17, and May 9, 1963, before Russell W. Cunningham, examiner. At the hearing the applicant and the above named protestants were present. In addition, counsel for The Gray Line, Inc., the Alexandria, Barcroft and Washington Transit Company, Inc., (A. B. & W.), and Diamond Tours, Inc., appeared and stated that he had previously filed a protest. The applicant objected on the basis that time in which to file a protest had passed. The examiner sustained the objection, but entertained an oral motion to intervene. The oral motion was made, appropriate objection made on behalf of the applicant on the ground that it violated Rule 16 of the Commission's Rules of Practice in that no cause was shown for failure to file a protest and, further, that oral intervention is not permitted

under the Commission's rules. The examiner overruled the objection and granted the oral motion to intervene. The examiner's ruling is affirmed. The intervenors could certainly classify as "interested persons" entitled by Section 16 of the Compact to file for reconsideration of the final decision herein. The applicant was certainly not caught by surprise by a protest, but only to the number of protestants, for as previously discussed, the application had been protested by three other companies. In addition, the examiner offered additional time, if applicant so desired, because of his ruling. Blind adherence to procedural rules is neither in the interest of justice nor the orderly conduct of any proceeding.

The applicant also objected, as a preliminary matter at the hearing, that he had no notice that the presiding officer had been designated by the Commission to preside at the hearing. One of the first acts of the Commission was to designate the presiding officer as an examiner because of the fact that the Commissioners are neither full-time nor located permanently at the office of the Commission, and for the further reason that it has only two employees designated to act as examiners. It cannot determine at any appreciable time prior to any given hearing who the presiding officer will be. No party is prejudiced by lack of advance knowledge as to the identity of the presiding officer. Any personal objection to a presiding officer may be raised before him as a preliminary matter. Counsel for applicant was afforded this opportunity by the presiding officer, but counsel declared that he had no personal objection to him. The

applicant's objection is overruled. A third procedural objection was raised when the applicant questioned the basis for the Commission's order of notice published in a newspaper of general circulation. A publication of such notice was ordered by the Commission in order to provide notice to any interested person of the application and in order that it can be fully informed of all pertinent facts. This must be in order to protect the public interest. The objection is overruled.

The record includes 600 pages of transcript and a total of 36 exhibits were marked for identification; however, upon objection 22 were rejected by the presiding officer and refused admission into evidence. Exhibits 1, 2, 3, 4, 7, 23, 24, 25, 26, 27, 28, 30, 31 and 32 were admitted in evidence in this proceeding. The Commission has reviewed the rejected exhibits, the objections thereto, and hereby affirms the rulings of the presiding officer as being correct in every instance.

Mode of Operation. Chronologically, the history of this application began in 1957 when Walter L. Davis originated a sightseeing operation. From then until November, 1959, the operation was conducted either as a sole proprietorship or as a partnership. In November, 1959, Holiday Tours was incorporated, with Davis as president. The primary interest of Holiday Tours is related to the sightseeing industry. Its principal place of business was and is located in Bethesda, Maryland, just outside the District of Columbia. It also had an outlet at the Fairfax Hotel in Washington

which was a combination gift shop and outlet for sale of sightseeing tours. In addition, a saleslady was employed at the Holiday Inn, Arlington, Virginia. The applicant transported its passengers in limousines having a designed seating capacity of eight passengers or less, excluding the driver. On the effective date of the Compact, March 22, 1961, applicant had three Cadillac limousines licensed in the District of Columbia. Holiday advertised its business in the yellow pages of the Telephone Director for several years prior to the effective date of the Compact; however, none of these advertisements specifically offered transportation in buses, and in most instances stated that the tours would be conducted in limousines. It also advertised by use of brochures which contained the various tours offered by the applicant. In addition to the tour offerings, the applicant would, if requested by a prospective passenger, offer its services on an hourly basis. The applicant alleged that where the number of people to be transported exceeded their limousine seating capacity it would secure a bus from one of the local bus companies. A witness for the applicant, Thomas Parran, Jr., testified that he was the owner of the Suburban Transit Company and that in 1958 he had "rented" a bus to Mr. Davis and in 1959 he has rented either to Mr. Davis or to the applicant, buses on at least ten to twelve occasions. Further, Mr. Davis testified that he had secured the use of buses from Atwood's Transport Lines in 1960 and the first three months of 1961. One of applicant's exhibits was a letter from the president of Atwood's to Mr. Delmer Ison, the Executive Director

of the Commission, to the effect that it had "chartered" buses in 1960 to the applicant. To support the above evidence that it had utilized the bus equipment, Witness Davis testified from manifests prepared by him or other employees. These manifests purported to show the number of passengers handled each day and their point of origin. Based on these manifests, Mr. Davis attempted to show on what days the people were transported and how they were transported, i.e., bus or limousine. This was accomplished by grouping the number of people transported from various locations and, where they appeared, the names of various drivers utilized by applicant.

The protestants cross examined extensively and argued that this was not proper evidence to prove the utilization of buses and that where in many instances the applicant had claimed a group or groups had been moved by bus, the same transportation could have been performed by the use of several limousines. This argument was borne out by the testimony of Mr. Davis that on some occasions more than thirty passengers had been transported by the use of three limousines running in relays; however, protestants offered not a scintilla of proof to bolster their own argument. The protestants also took the position that the transportation provided by buses, especially where Atwood buses were utilized, was actually rendered by the carriers themselves and this had placed Holiday Tours merely in the position of a broker and salesman.

Pre-Compact Regulation. The transportation of passengers for hire in sightseeing prior to the effective date of the Compact

was subject to four regulatory laws; namely, the Federal Motor Carrier Act (Interstate Commerce Act), the laws of the District of Columbia, the State of Maryland, and the Commonwealth of Virginia. In the District of Columbia one could engage in irregular route sightseeing operations solely by purchasing the proper license plate. This was true also in the State of Maryland. In the Commonwealth of Virginia authorization from the Virginia State Corporation Commission was a prerequisite to operations. Under the Federal Motor Carrier Act such transportation required a certificate of public convenience and necessity from the Interstate Commerce Commission unless such transportation was exempt from the certificate requirements. Exemption was possible under two different sections of that Act; namely, Section 203(b)(8) (the Commercial Zone exemption whereby a carrier lawfully engaged in the intrastate transportation of passengers over the entire length of the interstate route involved, in accordance with the laws of each state having jurisdiction, did not need a certificate); secondly, under Section 203(b)(2) (exempting operations conducted in taxicabs or other motor vehicles performing a bona fide taxicab service).

It is the contention of the protestants that applicant lacked the appropriate Virginia intrastate authority and thereby could not legally qualify under the first stated exemption. They argued further that applicant had not received a certificate of public convenience and necessity from the Interstate Commerce Commission. The protestants concluded that the transportation in

limousines came within the second stated exemption, i.e., the taxicab clause. It has been heretofore pointed out that the protestants' position re use of buses is that the transportation performed by the buses was actually done under the authority and operation of the carriers themselves.

The first question the Commission must resolve is what transportation was bona fide engaged in by the applicant on the effective date of the Act, March 22, 1961.

FINDINGS OF FACT

The Commission is of the opinion and finds that the transportation performed in buses was that of the carriers or owners of the vehicles and not that of the applicant, and that applicant's role was solely that of a broker and/or salesman. The applicant's claim for a certificate is also predicated on the allegation that more than eight passengers were transported in a single limousine. All this denotes to us is a crass violation of the Interstate Commerce Act. The pattern of operation of hundreds of one- and two-limousine sightseeing operators in the Metropolitan District has developed before us from numerous cases. All of these people, including Davis and Holiday Tours, were clearly performing transportation under the taxicab exemption clause of the Interstate Commerce Act. This was recognized by the Interstate Commerce Commission in Motor Carrier Operations, 51 M.C.C. 197, 7 Fed. Car. Cases Par. 31,725. That there were undiscovered violations is not

surprising considering the number of small operators in this area and considering the magnitude of the Interstate Commerce Commission's responsibility. The vehicles of Holiday Tours were designed to seat no more than eight passengers. That these violations should be honored and blessed with an unlimited certificate of public convenience and necessity would require stretching the term "bona fide" beyond a reasonable meaning. We do not believe that that term means complete compliance with every law, but it certainly does not embrace a deliberate violation of the Interstate Commerce Act certificate requirements.

We further find that the applicant offered no evidence that he had engaged in intra-Maryland commerce. We further find that applicant had no authority to operate intrastate Virginia from the Virginia State Corporation Commission, nor was there evidence that he had engaged in intra-Virginia commerce. Since our finding as to bus operations being those of the carriers eliminates any basis for the issuing of a certificate for that transportation, we must decide whether the limousine operations of the applicant within the District of Columbia qualifies for a certificate. Section 2(d)¹ of the Compact places a limit on the number of passengers which a vehicle is designed to carry -- eight -- and still be considered a taxicab. We conclude

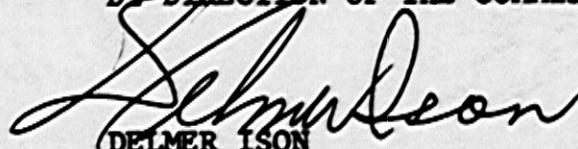
that the applicant was within the definition of 2(d) in that it
1 "2(d) The term "taxicab" means any motor vehicle for hire (other
than a vehicle operated, with the approval of the Commission, be-
tween fixed termini on regular schedules) designed to carry eight
persons or less, not including the driver, used for the purpose of
accepting or soliciting passengers for hire in transportation sub-
ject to this Act, along the public streets and highways, as the
passengers may direct."

"bona fide" engaged in performing taxicab operations within the District of Columbia. The applicant's operation by limousine was over irregular routes and more or less at the passenger's discretion in that the service offered by applicant through the use of brochures and other methods was simply an offer to prospective passengers of its sightseeing service and that the so-called tours were merely a means of getting various people to accept transportation to the same place at the same time with other passengers. They definitely were not scheduled and were subject to change. There is nothing contained in the evidence of this proceeding to distinguish the operations of this applicant from the operations of nearly 100 limousine "grandfather" applicants who were found in Orders Nos. 165 and 174 to have been engaged in taxicab operations as defined both by the Interstate Commerce Act and by Section 2(d) of the Washington Metropolitan Area Transit Regulation Compact.

Inasmuch as the Commission has found that the applicant, Holiday Tours, Inc., was bona fide engaged only in performing a taxicab operation on March 22, 1961, the application for a certificate of public convenience and necessity should be denied.

THEREFORE, IT IS ORDERED that the application of Holiday Tours, Inc., for a "grandfather" certificate of public convenience and necessity be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:



DELMER ISON
Executive Director

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WASHINGTON, D. C.
ORDER NO. 343

IN THE MATTER OF:

Application of Holiday Tours, Inc.,)
for a Certificate of Public)
Convenience and Necessity.)
)
)

Served March 10, 1964

Application No. 18
Docket No. 31

APPEARANCES: As previously noted.

Holiday Tours, Inc., seasonably filed an application for a certificate of public convenience and necessity under the "grandfather" provisions of Section 4(a) of the Compact. By Order No. 334, served December 13, 1963, the Commission denied the application, finding that Holiday Tours, Inc., had not been engaged in any transportation requiring a certificate on the effective date of the Compact. Reconsideration was requested by the applicant, and granted by the Commission on January 29, 1964, by Order No. 340.

The application for reconsideration sets forth numerous specified errors, claiming procedural defects and findings not supported by substantial evidence.

We have reviewed the procedural attacks and find that all of them are without merit. Therefore, we reaffirm all of our procedural adjudications set forth in Order No. 334, including affirmation of the examiner's rulings on exhibits.

No objections have been raised to our prior description, in Order 334, of applicant's mode of operation and pre-Compact regulation and, therefore, we affirm it as a part of our determination herein.

Two salient questions are presented on reconsideration:

1. Was the transportation rendered in buses performed by the applicant or the common carriers that owned them?
2. Were the limousine operations taxicab in nature?

Applicant's position: It is the contention of the applicant that it was engaged in the sightseeing business as a carrier and that such business was operated by it in limousines and buses. It vigorously advocates that all transportation rendered in buses was actually performed by it. The buses were, it is claimed, leased or rented by it and while so leased or rented were under the exclusive control, direction, and operation of Holiday Tours. It further contends that since it lacked only ownership of the vehicles it was "bona fide" engaged in bus transportation. As to the limousine operations, Holiday contends that these were not taxicab operations, because more than 8 passengers had been transported in a vehicle at a time, that the operations were tours conducted on schedules, and not at the direction of the passenger.

Protestants' position: The protestants counter the position of the applicant by pointing out that applicant had no authority to operate buses, and has advanced no basis for even claiming to operate under a claim of right; that the pattern of Holiday's business was to render service in limousines until it had more passengers than could be handled in those vehicles, and then would charter a bus from a duly authorized common carrier; that the transportation rendered in the buses was performed by the common carriers inasmuch as they owned the buses, paid the drivers, withheld, collected, and paid social security, fuel, and other taxes; were authorized by law to perform the operations; in short, all the indices of actual operations. As to limousine operations, protestants claim that the service was performed in vehicles designed to carry no more than 8 passengers, that this type of operation was similar to that of more than a hundred other limousine operators in the metropolitan area, which service had been classified as taxicab service by the Interstate Commerce Commission.

The Commission is of the opinion and finds that Holiday Tours was not bona fide engaged in bus operations. The bus operations can only be classified as being that of the common carriers, chartered by Holiday Tours to transport the people for whom it had arranged the transportation. The Commission recognizes that the practice of limousine operators chartering buses is widespread throughout the industry. However, there is no evidence to prove that applicant held itself out to engage in bus service. None of its advertising makes this claim, nor did it attempt to secure the necessary certificates from the appropriate authorities. The buses utilized were marked and painted in the scheme of the common carriers and applicant posted no signs thereon to indicate that the buses were under its direction and control. The utilization of guides on vehicles driven by drivers unfamiliar with the wishes of Holiday Tours is not conclusive nor even persuasive when all the circumstances are considered. We can place little credence on the testimony that the Interstate Commerce Commission advised applicant that it did not need a certificate prior to rendering bus service.

The Warrenner decision in 1958 (77 MCC 213) and the A. B. & W. vs. D. C. Transit System, Inc., decision in 1960 (83 MCC 547) renders such testimony entirely inconsistent with official decisions of the Interstate Commerce Commission. We conclude that the bus operations were charter services rendered by the common carriers, i.e. the transportation of persons arranged by someone (Holiday) other than the carrier.

Applicant's operations by limousine prior to the effective date of the Compact were obviously conducted under the exemption provision of Section 203(b)(2) of the Interstate Commerce Act. That proviso exempted operations conducted in taxicabs or other motor vehicles performing a bona fide taxicab service. That Commission held, in Motor Carrier Operations Between Washington, D. C., and Mount Vernon, Va., 51 MCC 197, that the transportation of passengers in "so-called limousine-sightseeing vehicles" is a bona fide taxicab service. Any transportation beyond the scope of that proviso was illegal, especially the carrying of more than 6 passengers in one vehicle, not performed under color of right, and therefore not bona fide.

Despite applicant's contention, we find that its limousine operations come within the meaning of taxicab service as defined in Section 2(d) of the Compact. The so-called "scheduled" service admittedly was not rendered when there were no passengers seeking service and such service, when rendered, was at the request of prospective passengers. The applicant has not advanced any "color of authority" to justify its claim that it was "bona fide" engaged in operations other than taxicab service. Transporting more than six passengers in one vehicle was illegal in interstate commerce and, having given no legal basis for so doing, cannot now claim that such transportation was "in good faith".

Inasmuch as the Commission has found that the applicant, Holiday Tours, Inc., was bona fide engaged only in performing a taxicab operation on March 22, 1961, the denial of the application for a certificate of public convenience and necessity should be affirmed, and Order No. 334, as modified herein, affirmed.

THEREFORE, IT IS ORDERED that Order No. 334 be, and it is hereby, modified as hereinabove provided and our decision to deny the application affirmed.

BY DIRECTION OF THE COMMISSION:



DELMER ISON
Executive Director

REPLY BRIEF FOR PETITIONER

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,561

HOLIDAY TOURS, INC.,

Petitioner,

v.

**WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION,**

Respondent.

On Petition To Review and Set Aside
Order Of The Washington Metropolitan
Area Transit Commission

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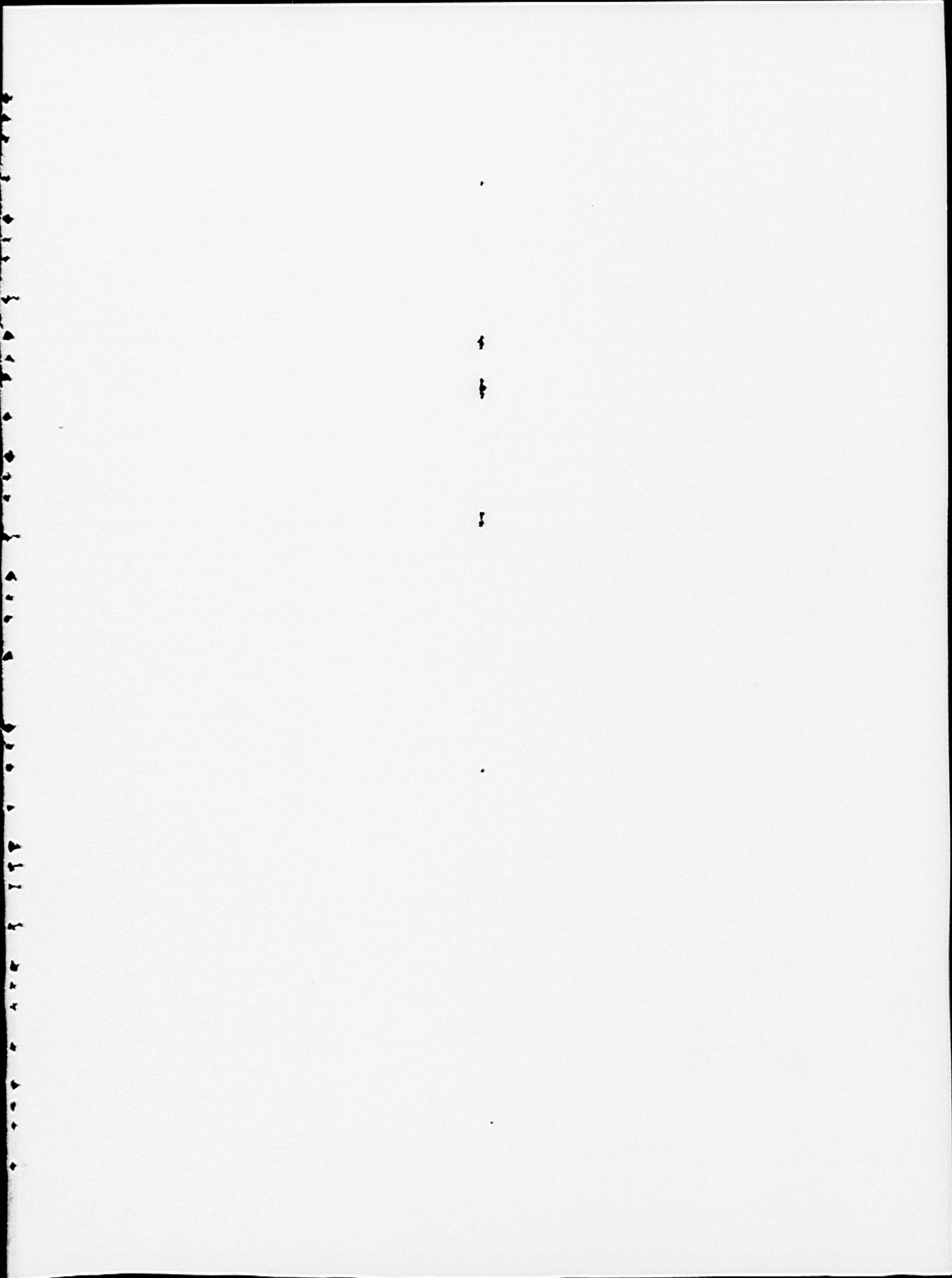
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**United States Court of Appeals
for the District of Columbia Circuit**

FILED OCT 9 1964

*Nathan J. Paulson
CLERK*



United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,561

HOLIDAY TOURS, INC.,

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**On Petition To Review and Set Aside
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REPLY BRIEF FOR PETITIONER

ARGUMENT

I.

A. Respondent first admits that ownership of the buses is not controlling as to who performed the transportation in the instant proceeding. Yet, it proceeds to state:

"For example, had the petitioner owned the vehicles which performed the bus service, a different picture would appear."

This statement certainly indicates that the single factor of ownership or the lack thereof was given undue weight by the Commission in reaching its decision below. As to who is, in legal contemplation, the operator of the vehicle, the question cannot be decided upon this factor. *Boston and Maine Transportation Company, Common Carrier Application*, 34 M.C.C. 599 (1942). Petitioner submits that when undue weight is given to this single factor its position is prejudiced contrary to the prevailing law. Certainly nothing in Section 4(a) requires that the transportation company own its own vehicles. Cf. *Calvin v. United States*, 44 F. Supp. 684 (1942).

B. Respondent's brief seems to indicate that, under the "grand-father" provisions of the Washington Metropolitan Area Transit Regulation Compact, the Commission is required to merely transfer existing federal and state operating authority from a former jurisdiction to its own. This *pro forma* arrangement is not consistent with Section 4(a). It would have clearly been easier for Congress to simply state that the existing certificates were to be transferred from one jurisdiction to another. Instead, the Act speaks in terms of ". . . if any person was *bona fide* engaged in transportation subject to *this Act* . . ."

Petitioner's vehicles were properly licensed (Tr. 69, 72) and specific inquiry was made to the states of Maryland, Virginia, the District of Columbia and the Interstate Commerce Commission as to certificate requirements (Tr. 90). Petitioner submits that operations openly conducted and pursuant to a sincere attempt to comply with regulatory laws constitute "*bona fide* transportation." *Slagle Contract Carrier Application*, 2 M.C.C. 127 (1937).

Petitioner further challenges respondent's contention that, in *Slagle*, the relevancy of state laws was a minor consideration. The determination of that case wholly depended upon whether Congress had conditioned

rights under the "grandfather" provisions¹ of the Motor Carrier Act of 1935 upon compliance with state laws. Holding that had Congress wished to so condition those rights, it would have done so "in clear and unmistakable language" (2 M.C.C. 138), the Commission stated:

. . . we conclude that the fact that an applicant under the 'grandfather' clause has not complied with state laws is not by itself sufficient to bar his right to authority . . . (2 M.C.C. 141)

Petitioner submits that the issue here, the only issue, is whether petitioner engaged in *bona fide* transportation. It has been shown that "bona fide" cannot be equated solely with strict compliance of existing laws. This is particularly true where an applicant has attempted to make compliance with those laws.

II.

A. Respondent is hypertechnical when it attributes to petitioner's president proof that the transportation service was that of the owners of the vehicles. Its brief notes that the witness for petitioner indicated that he "chartered" the buses; that "charter" is a term of art, and that "charter" indicates that groups of passengers are assembled by one party and transported by another. Petitioner submits, first, that the witness cannot be expected to use "terms of art" as wisely as those with legal training. Secondly, petitioner did "obtain" and utilize bus vehicles for the transportation of its passengers. So long as petitioner directed and controlled that transportation it was the carrier, ownership notwithstanding. *Dixie Ohio Express Company, Common Carrier Application*, 17 M.C.C. 735 (1939). *Calvin v. United States, supra*.

Respondent sets forth facts in the proceeding below and argues that such indicate that the bus service was performed by the owners of

¹ Sections 206(a), 209(a).

the vehicles rather than petitioner. Among these are (1) that the passengers, rather than the vehicles themselves, were insured by petitioner; (2) that employees of the owners operated the buses and (3) that while all bus transportation in 1960 was performed in vehicles owned by Atwood Transport Lines, Inc., petitioner did not produce an Atwood witness to show that the word "charter" was intended to have meaning other than its normal usage.

It is clear that these single factors cannot be determinative of the issue before the court. The answer depends upon a full consideration of all the conditions connected with the transportation service. *Boston & Maine, supra*. Therefore, in answer, petitioner states: (1) the insuring of passengers by petitioner certainly indicates that petitioner alone held itself out and was alone responsible to the public; (2) at times, petitioner supplied its own driver (Tr. 60, 121), and, at other times, an employee of petitioner was aboard the bus to direct the pattern of operations (Tr. 60), and; (3) notwithstanding what terms of art are utilized by respondent, it is an admitted fact that petitioner had buses in its possession and transported passengers therein.

B. Respondent states that "[t]he burden of proving bona fideness is on the applicant." This is treating the problem here much too simply. In *Slagle Contract Carrier Application, supra*, the Interstate Commerce Commission stated:

... where applicant has established the fact of actual operations, not only conducted on the 'grandfather' date but continuously maintained thereafter, we think that we may fairly assume that they were 'bona fide', unless the contrary is shown. In other words a *prima facie* case has been established, and the burden is upon protestants having knowledge of the operations to produce for our consideration the evidence of lack of good faith.

In the proceedings below the *protestants and intervenors in opposition adduced no evidence whatsoever*: Petitioner submits that it has met its burden of proof and that those in opposition have failed to rebut

the evidence of record and that the Commission, who is certainly not expected to be adverse party below, has erred in its interpretation of the law as applied to this case.

C. The Commission once again fails to answer the arguments, continuously maintained by petitioner, that the tours conducted by petitioner were scheduled tours and not at the discretion of the passenger. As in the proceedings below, the Commission continues to simply state a conclusion without reasoning therefor.

III.

Interestingly, respondent cites *Montgomery Charter Service, Inc. v. Washington Metropolitan Area Transit Commission*, 112 App. D.C. 321, 325 F.2d 230. In *Montgomery* the carrier operated a limousine service under a claimed exemption of the Washington Metropolitan Area Transit Regulation Compact, 74 Stat. 1031. The Commission there argued that Montgomery required a certificate to so operate and issued a cease and desist order. This court found that the statute as worded when the action was brought, did not require a certificate and, inasmuch as the statute, as worded at the time of the decision, now required a certificate, a "grandfather" certificate should issue. Therefore, we have a case in which the carrier did not hold a certificate and there was a disagreement as to the necessity of one. Yet, *Montgomery* did not forfeit its rights under the act because of the lack of a certificate.

In all fairness, petitioner cannot be said to have forfeited its rights under Section 4(a) by the lack of a certificate.

IV.

Respondent contends that the Commission showed no inconsistency in seeking and obtaining a restraining order to enjoin petitioner from utilizing buses in its business. Respondent reasons that, in an affidavit attached to the complaint for injunctive relief, Commissioner C. M. Duke

stated that some of the vehicles of petitioner's were owned by petitioner and operated by its employees. Even though petitioner owned only one small bus at the time of the complaint for injunctive relief, the Commission does not deny that the restraining order applied to petitioner's entire business which was conducted in bus-sized vehicles most of which was conducted in the same manner as in March, 1961.

Petitioner presses the argument that the Commission's action in seeking injunctive relief covering all of petitioner's business conducted in bus-size vehicles is indeed inconsistent with its position in the grandfather proceedings below.

CONCLUSION

Certainly the Act in question does not contemplate that multiple grandfather rights shall be granted on the basis of a single transportation service. Moreover, it cannot be said that the operations of petitioner were an integral part of the separate operations conducted by the owners of the vehicles. Respondent admits that a transportation service was conducted on the effective date of the Act; whose transportation service was it then? Could it be said that if petitioner were to obtain a bus from D. C. Transit System, Inc., and a bus from Atwood Transport, Inc., and perform the same transportation, that the intent be ascribed to Congress that those two companies would be entitled to grandfather rights? Petitioner submits that no such intent can be ascribed to Congress; that petitioner comes within the literal reading of Section 4(a) of the Act, and that the Commission misinterpreted the prevailing law, the Act itself and the intent of Congress.

Respectfully submitted,

LEONARD A. JASKIEWICZ

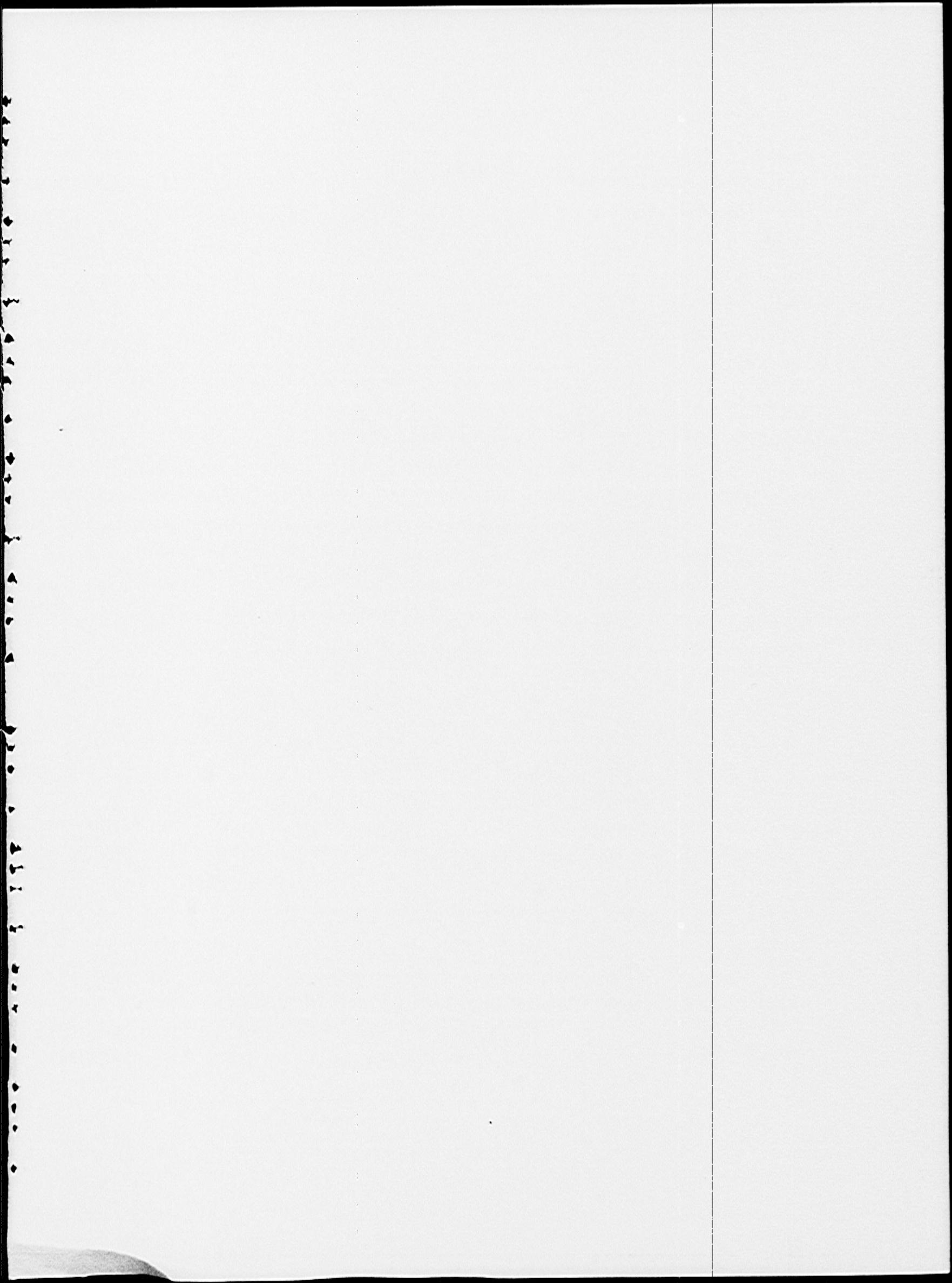
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BRIEF FOR INTERVENORS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,561

HOLIDAY TOURS, INC.,

Petitioner,

v.

**WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION,**

Respondent.

On Petition To Review and Set Aside
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United States Court of Appeals
for the District of Columbia Circuit

FILED SEP 25 1964

Nathan J. Paulson
CLERK

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,561

HOLIDAY TOURS, INC.,

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v.

WASHINGTON METROPOLITAN AREA
TRANSIT COMMISSION,

Respondent.

ON PETITION TO REVIEW AND SET ASIDE
ORDERS OF THE WASHINGTON METROPOLITAN
AREA TRANSIT COMMISSION

Brief for Intervenors
D. C. Transit System, Inc.
A. B. & W. Transit Company
and The Gray Line, Inc.
Washington, Virginia & Maryland
Coach Company, Inc.

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(c)

COUNTER-STATEMENT OF THE CASE

These Intervenors adopt the Statement of the Case as set out by Respondent.

STATUTES AND REGULATIONS INVOLVED

This case involves the applicability of the Act of August 9, 1935, 74th Congress, Ch. 498 (49 Stat. 544, U. S. Code, Title 49, 303 and 311); Act of August 22, 1957, Public Law 85-163 (71 Stat. 411, U. S. Code, Title 49, 303 (c)); Act of September 15, 1960, Public Law 86-794 (74 Stat. 103, Title II, Art. XII, Sec. 21); Code of Maryland (1959) Art. 78, Sec. 32; the Code of Virginia, Sec. 56-273, 56-278, 56-338.40; Regulations, Interstate Commerce Commission, 6 F. R. 3042, 3675, 5042, 6309. The relevant provisions of these statutes are set forth in the Appendix.

STATEMENT OF QUESTIONS PRESENTED

In the opinion of Intervenors D. C. Transit System, Inc., Washington, Virginia and Maryland Coach Company, Inc., A.B.&W. Transit Company, and The Gray Line, Inc. the questions are:

1. Whether the Commission erred in considering (a) ownership of vehicles used for transportation as an element in determining who performed such transportation services, and (b) performing transportation in violation of Federal and State laws as an element in determining whether Petitioner was "bona fide engaged in transportation".
2. Whether the Commission erred in finding that (a) the transportation services relied upon by Petitioner to support its claim for a certificate were not bona fide instituted and furnished, and that (b) Petitioner did not control the transportation service relied upon to support the application.
3. Whether the Commission utilized an additional standard of fitness, thereby exceeding the provisions of Article XIII, Section 4(a) of the Compact, in denying Petitioner a certificate for sightseeing and charter operations in buses.

SUMMARY OF ARGUMENT

1. Petitioner owned no buses, had no licenses for buses in the District of Columbia, Maryland and Virginia, had no certificates of authority to operate buses in any of the jurisdictions involved. Petitioner was a broker selling tickets and assembling patrons for in-season daily sightseeing, involving the occasional use of a chartered bus.

2. Assuming arguendo that the occasional covert rental of "bootleg" buses two years before the effective date of the Compact amounted to "engaging in transportation," such acts were violations both of the motor vehicle laws of the District of Columbia and Virginia, and the statutes of the United States governing transportation by common carriers for the District of Columbia, Maryland and Virginia. Therefore, it cannot be said that Petitioner's operations were "legal and in good faith."

3. The argument that the Commission injected the element of "fitness" into this proceeding as a requirement for the grant of a certificate is without merit.

ARGUMENT

POINT I

PETITIONER OWNED NO BUSES, HAD NO LICENSES FOR BUSES IN THE DISTRICT OF COLUMBIA, MARYLAND AND VIRGINIA, HAD NO CERTIFICATES OF AUTHORITY TO OPERATE BUSES IN ANY OF THE JURISDICTIONS INVOLVED. PETITIONER WAS A BROKER SELLING TICKETS AND ASSEMBLING PATRONS FOR IN-SEASON DAILY SIGHTSEEING, INVOLVING THE OCCASIONAL USE OF A CHARTERED BUS.

The testimony shows that Petitioner itself owned no buses (Tr. 143-144); that Petitioner had licenses only for limousines in the District of Columbia (Exhibits 2, 3, and 5, Tr. 67-69, Tr. 71); that Petitioner had no authority issued by the Interstate Commerce Commission to operate buses (Tr. 138-139). Petitioner conceded in testimony and in its brief that it lacked any certificate of authority from the State Corporation Commission of Virginia (Tr. 77-79), the Public Service Commission of Maryland (Tr. 138-140) or the Public Utilities Commission of the District of Columbia to operate buses (Brief of Petitioner, pg. 13). The latter jurisdiction had issued licenses limited to limousines. Petitioner conducted its business by selling tickets itself or through hotel or motel ticket agencies (Tr. 28-30), and furnishing limousine service (Tr. 28-29). Petitioner had fifteen to twenty guides who may have been on commission (Tr. 145-146),

or who may have received a guaranteed sum (Tr. 424-425). In any event, no deduction of Social Security was withheld by their so-called employer (Tr. 427). Petitioner ran scheduled sightseeing tours, (Tr. 392-394) which were the same whether provided by limousine or by chartered bus (Tr. 395). When a large enough group had been assembled, Petitioner would charter a bus (Tr. 151-152). Petitioner would pick-up the groups that had assembled either at its offices along Wisconsin Avenue, at the Fairfax Hotel in Washington, or several motels in the District of Columbia and Virginia. Petitioner carried no insurance on buses (Tr. 149-150) to protect the public. Petitioner did not furnish the driver for the bus, but used the certificated carrier's drivers (Tr. 152-153). These buses were chartered and paid for on a charter basis (Brief for Petitioner, Pg. 4; Exhibit 1-A; Tr. 231), whether or not filled to capacity by Petitioner. Petitioner admits that it had no written lease agreement with any carrier (Tr. 231-232).

Petitioner's advertisement for 1959 in the classified telephone directory stated "Cadillac limousines available" (Tr. 224), and for 1960 solicited "sight-seeing from Cadillac limousines" (Tr. 224). Petitioner admitted he had no advertisements that used the term "motor coach" or "motor bus" (Tr. 225-226). Petitioner never used a bus with its name displayed (Tr. 228).

In short, Petitioner engaged in two kinds of services; limousine sightseeing service (which was common carriage) and sporadic charter of buses when the size of its assembled sightseeing groups made buses more economical. It is the latter activity which Petitioner seeks to have interpreted as common carriage by bus. Such a tenuous claim to have carried out the responsibility of a common carrier will not support the grant of an unlimited certificate.

An applicant under a grandfather clause for a certificate of public convenience and necessity must have direction and control of the motor vehicles which did the carrying for it, so that it would be responsible both to the shipper and to the general public for their operation; it must stand, with respect to the motor vehicles which it used, in the relation of proprietor by the virtue of ownership, lease, or other arrangement, mere user in the absence of control and direction, even though exclusive, not being enough.***

13 Am Jur 2d 633

The fact that a certificated carrier supplied a vehicle and driver on charter does not "out of the whole cloth" transform the chartering party into a certificated common carrier. As set forth in Tanner Motor Livery, Ltd. -
Common Carrier Application, 3 Fed. Carr. Cases 30,204:

In other instances applicant furnishes a motor vehicle and a driver therefor who takes directions in a general way from the customer in the matter of where to drive and the frequency and duration of the stops to be made. The control which the customer may exercise over the driver and indirectly over

the vehicle is very limited in that such person may not discharge a driver, or cause him to use the motor vehicle in a manner contrary to good judgment or to the instructions which he has received from applicant. Actually, the customer is paying for a motor-vehicle service and not merely for the use of a motor vehicle. The possession and control of the motor vehicle while being driven by one of applicant's drivers remains with applicant. We conclude that applicant, as to such operations, is and has been a common carrier by motor vehicle.

In the present situation, the responsibility to the public, the operation of the vehicle, and the obligation to conform to established law, were undeniably vested solely in the certificated owners and operators of the chartered motor vehicles.

The uncontrovertible facts in this litigation establish conclusively that Holiday Tours, Inc. consistently and persistently held itself out as a limousine operator only. The facts disclose convincingly that Holiday Tours, Inc., owned and operated limousines only, and that its sightseeing services were solicited upon that basis alone.

Petitioner mistakenly contends that in those infrequent situations where it chartered a vehicle from a properly licensed and certificated motor carrier (such as D. C. Transit, WV&M, Atwood, etc.) the chartered movement was converted into Petitioner's transportation movement.

This argument is palpably inconsistent with the law and numerous regulatory decisions with respect to analogous situations.

Walter L. Davis, Petitioner's president, procured and furnished motor bus transportation for such of his passengers that were "overflow" with regard to the limited facilities afforded by Petitioner's limousine fleet. In these arrangements for the use of motor bus equipment, Davis chartered the motor bus facilities of established certificated carriers, paying the chartering carrier a flat fee.

The fact that Davis may have specified the itinerary, designated the stops, or placed a lecturer on the bus as a part of his business activity, is not incompatible with the usual conduct of a charter operation.

The suggestion, therefore, that Petitioner became a carrier by bus because it chartered buses would do violence to the clear, unambiguous language found in decisions of the Supreme Court, and the regulatory commission having jurisdiction over the motor carrier industry. In Tauck Tours, Inc., Contract Carrier Application, 10 M.C.C. 362, the Commission stated:

Since that time it has conducted throughout the territory so-called round-trip pleasure or sightseeing tours which originate and terminate at New York City

and Newark, with no pick-up or discharge of passengers en route, except that, at the convenience of passengers on certain tours to the South the passengers may start and terminate at Washington, D. C. Tickets are sold individually in advance for specific tours.

***In connection with the movements by motor-bus, applicant hires vehicles from carriers which are duly authorized to conduct special or charter operations in the territory involved. The use of each vehicle is paid for on the basis of a flat rate for each round trip, usually figured on a mileage basis, and the operator from whom the motorbus is secured assumes responsibility as a common carrier of the passengers, pays the chauffeur and all maintenance and operating expenses of the vehicle, and carries public-liability and property-damage insurance. ***The chauffeur has sole control over the operation of the vehicle. Applicant, however, employs a conductor who accompanies each tour and whose function it is to take care of the comfort of the passengers and to point out the places of interest on the way.

***The examiner finds that applicant's operation, to the extent that it may consist of the sale, offering for sale, provision of, furnishing, contracting or arranging for the transportation by motor vehicle of passengers and their baggage in interstate or foreign commerce, is that of a broker as defined in the act. [Emphasis supplied]

A case analogous to the instant matter is Crescent Express Lines v. United States, 320 U.S. 401, 88 L. Ed. 127, 64 S. Ct. 167. There the application was for an unlimited certificate to perform bus service in special operations. The Court said:

As appears from the application and the evidence, the appellant's operations began in 1928 when Herman Trevax purchased a seven-passenger sedan and began carrying passengers to summer resorts in the mountains of New York State.***

The partners advertised "7 Passengers Cars Leaving Daily to All Parts of the Mountains," "From Your Home to Your Hotel." An affidavit stated that the partners would "transport people to hotels located in all roads and by-roads." The firm owned no buses of any kind.***

(3) Finally, appellant urges that it is beyond the power of the Commission to limit its operations to "transportation of not more than six passengers in any one vehicle." The freedom is claimed to use buses or other multiple passenger type of conveyance.***

The appellant argues that it would be engaged in the same business, if, in lieu of using seven-passenger sedans, it undertook to haul larger numbers of passengers in buses. But the special advantage to the public inherent in the use of small vehicles operating as occasion demands from door-to door rather than between terminals, sets off the appellant's business from the service provided by regular lines operating heavier equipment.***

It appears from the application that Crescent owned no buses; it operated nothing but sedans. To authorize the appellant to change to the business of carrying passengers by bus would alter the position in the transportation system which it occupied on June 1, 1955. Noble v. United States, 319 U.S. 88, 87 L.Ed. 1277, 63 S.Ct. 950.***

Petitioner's reliance upon Thomson v. United States, 321 U.S. 19, 88 L.Ed. 412, 64 S.Ct. 392, as authority

for the proposition that "non-employment of drivers, lack of vehicle ownership and failure to display applicant's name are not determinative of the question of who was the operator," is ill-placed. In Thomson the railroad:

has consistently held itself out to the general public and to shippers as being engaged in...rail-motor freight service...The shipper...is informed by the railroad's tariffs that the railroad at its option may substitute motor vehicle service for rail service.*** It, the railroad, has entered into written contracts for this service with motor vehicle operators...

Petitioner never held itself out to the general public as providing bus transportation (Tr. 224-226).

Petitioner never filed appropriate tariffs.

Petitioner never entered into written contracts.

Petitioner never claimed status as a carrier until after the effective date of the Compact. (See Exhibit 5).

Ownership of vehicles is not, per se, a condition for the issuance of a certificate under the provisions of the Compact. The Commission, however, can issue a certificate only to those persons engaged as a carrier on the critical date. The fact that Petitioner chartered vehicles did not destroy the carrier status of the owner and operator of those vehicles during the terms of the charters. In fact, charter operations are an

integral part of a total carrier service to the public, including in many instances regular route, sightseeing, and charter services.

The charter parties that used buses from time to time were organized and assembled by Petitioner.

Petitioner tendered to the established, certificated carrier the carrier's charter rate and obtained the exclusive use of the bus and driver, nothing more. Clearly, Petitioner acted as a broker, so far as bus transportation was concerned.

The Court should be made aware of the fact that Petitioner's brief does not set out in toto the test recited in Dixie Ohio Express Company, - Common Carrier Application, 17 M.C.C. 735. That test was:

If the vehicles of the owner-operators, while being used by the applicant, were operated under its general direction and control, and under its responsibility to the general public as well as to the shipper, then its operations, in which such vehicles were employed, come within the phrase "or by a lease or any other arrangement of Section 203 (a)(14)," and applicant, as to such operations, was a common carrier by motor vehicle.*** The vehicles, while in applicant's service, were registered under applicant's operating authority and had applicant's name painted, or otherwise shown, thereon. Insurance covering them was arranged and paid for by applicant. Applicant's dispatchers or other employees directed the time and manner of the loading and unloading of the vehicles and also directed their movement over applicant's routes.***

In Tauck Tours - Extension, 54 M.C.C. 291,
the Commission stated with regard to Dixie Ohio Express
Company, supra:

Although that case, which had been followed and quoted with approval many times, dealt with a property carrier, the tests of carrier status there stated are equally applicable here. In other words, in order for applicant here to achieve a carrier status in the conduct of its all-expense tours it would have to appear that applicant took over actual control of, and assumed complete responsibility both to its tour patrons and to the public for, the operation of the buses which it charters. That it does no such thing is apparent from the description of its modus operandi contained in the prior reports. Instead it charters for the use of each tour group certain buses which are operated by drivers who are hired and paid by the equipment owner and who are responsible for the physical operation and maintenance of the equipment throughout the tour. True applicant controls the tour itinerary and the driver takes instruction from him as to routes to be followed and changes therein, departure hours, and stops, but that is not enough to require, or even support, the conclusion that applicant in fact acquires or assumes actual control over, and responsibility to patrons and the public for, the physical operation of the equipment in which its tours are conducted. Clearly applicant is not in the described operations operating as a carrier by motor vehicle. This conclusion conforms to numerous precedents beginning with Cain Broker Application, 2 M.C.C. 633 [Emphasis supplied].

ASSUMING ARGUENDO THAT THE OCCASIONAL COVERT RENTAL OF "BOOTLEG" BUSES TWO YEARS BEFORE THE EFFECTIVE DATE OF THE COMPACT AMOUNTED TO "ENGAGING IN TRANSPORTATION," SUCH ACTS WERE VIOLATIONS BOTH OF THE MOTOR VEHICLE LAWS OF THE DISTRICT OF COLUMBIA AND VIRGINIA, AND THE STATUTES OF THE UNITED STATES GOVERNING TRANSPORTATION BY COMMON CARRIERS FOR THE DISTRICT OF COLUMBIA, MARYLAND AND VIRGINIA. THEREFORE, IT CANNOT BE SAID THAT PETITIONER'S OPERATIONS WERE "LEGAL AND IN GOOD FAITH."

POINT II

Witness Thomas Parran testified that he had "leased" buses to Petitioner, (Tr.287-288) under an oral agreement (Tr. 285-286, 289). This is the same person who held a certificate from the Interstate Commerce Commission to do business as Suburban Transit Company and whose bus operation had been transferred to the management of WMA Transit Company by the Interstate Commerce Commission (Tr. 293-294, 296-297). The net result of this testimony can be taken two ways. Possibly the buses involved were the property of Suburban Transit Company, the certificated carrier -- in such instance they should have been managed and leased by WMA Transit Company and Petitioner should have arranged its charters with that carrier. The more likely possibility is that the buses were the property of Parran the individual, who no longer had the

status of a common carrier by bus (Tr. 299-300, 302).

In any event, it is clear that Parran received the money and kept it (Tr. 295, 298). It is also clear that the leasing regulations requiring a written lease for at least 30 days were not complied with by the witness and the Petitioner (Tr. 285-286, 289). It is undisputed that from outward appearances the buses were being operated by the Suburban Transit Company as the carrier -- that company's name and colors and motor carrier number remained upon the buses (Tr. 306). Suburban Transit's insurance policy covered the buses (Tr. 304). Finally, the arrangement was sporadic, consisting of a few trips in 1958 (Tr. 287-288), and some dozen trips in 1959. Such sporadic transportation occurring two years before the effective date of March 22, 1961 cannot be held to have given Petitioner status as a common carrier by bus. It nowhere appears that Parran's buses were licensed either in the District of Columbia or the Commonwealth of Virginia, and the laws of both jurisdictions required this in 1958 and 1959 for any sort of motor transportation. Further, for the bus operations described, Petitioner was required to have a certificate from the Interstate Commerce Commission, a certificate to operate buses from the District of Columbia, a certificate to operate buses from the Commonwealth of Virginia. The

effect of Petitioner's illegal operations is to destroy the bona fides of his alleged bus operations.

The Compact came into being as of the effective date of March 21, 1961. Title II, Article XIII, 21. of the Compact requires:

All rules, regulations, orders, decisions or other action prescribed, issued, made, or taken by the Interstate Commerce Commission, the Public Utilities Commission of the District of Columbia, the Public Service Commission of Maryland, or the State Corporation Commission of Virginia, and which are in force at the time this section takes effect, with respect to transportation or persons subject to this Act, shall remain in effect, and be enforceable under this Act and in the manner specified by this Act, according to their terms, as though they had been prescribed, issued, made, or taken by the Commission pursuant to this Act, unless and until otherwise provided by such Commission in the exercise of its powers under this Act. [Emphasis supplied]

No similar language is found in the Interstate Commerce Act. Thus, the plain language of the Compact emphasizes the unique nature of the initial certificates to be issued by this Commission.

A true "grandfather" proceeding is one in which a carrier is converted from a lawful unregulated carrier into a lawful certificated carrier. This proceeding could more accurately be called a "reissuance" or a "consolidation" proceeding. All three of the former segments of what now

is the Washington Metropolitan Area Transit Commission (hereinafter "WMATC") issued certificates to, as well as regulated, carriers. Additionally, the Interstate Commerce Commission regulated those carriers operating across state boundary lines. The basic statute charges this Commission with the duty of reorganizing the diverse authorizations granted to the many different types of carriers by the four (4) agencies heretofore supervising the transportation of passengers. Thus, the WMATC is charged by Congress and the two State Legislatures with determining the bona fide character of prior legal operations of each carrier -- both certificated operations and carriage incidental to certificated operations. Any operations that were not certificated or authorized under Section 203 (b)(8) of the Interstate Commerce Act were illegal when conducted and cannot now be rewarded with a certificate.

The argument that none of the jurisdictions in and through which Petitioner performed its service sought to prevent the conduct thereof in buses, is specious. Those jurisdictions properly looked to the owner of the buses as the certificated carrier, and in each instance the bus carried the name and colors of the true owner and appropriate authority to engage in charter operations. (Tr. 306):

(By Mr. Jaskiewicz)

Q What did you do in connection with providing buses to Holiday Tours?

A As I testified, Holiday Tours used an ACF bus, Model IC-41, Bus No. 65, titled "Thomas Parran, Jr. trading as Suburban Transit", with a Colesville Road address on the registration card, Suburban Transit appearing on the side, -- the bus was painted yellow and green -- on eight or ten or 12 occasions in 1959.

The bus was delivered to them on Wisconsin Avenue in Bethesda, Maryland, in the summer of 1959. I don't know the exact dates.

MR. JASKIEWICZ: I have nothing further.

Thank you, Mr. Parran.

Similarly, the argument that the series of letters between counsel and the Virginia Corporation Commission shows no need for authority, is specious. In his letter, counsel described the business of this client as follows: "The tour would be conducted from Bethesda, Maryland to and through the District of Columbia and to Mount Vernon, Virginia" (Exhibit 5). Contrast such a simple statement of interstate transportation passing through Virginia with the actual operations. Petitioner's president testified that Petitioner had offices in Arlington, Virginia and in Woodbridge, Virginia (Tr. 27, 28, 158). The testimony emphasized the fact that Petitioner originated passenger trips in Virginia (Tr. 65). These tours originated from some four (4) different points of origin (Tr. 164, 184-186, 189, 200). The transportation was

performed by both limousines and buses (Tr. 165-166, 168, 176). When passengers were originated from Virginia points, the sightseers were also discharged back at the point of origin in Virginia (Tr. 173). None of this highly pertinent information was conveyed to the State Corporation Commission of Virginia. Yet, Petitioner's same counsel would have the WMATC believe that Petitioner needed no Virginia authorization to conduct its business. Such evasive tactics permeate the conduct of Petitioner's business affairs. The Commission could not conclude that Petitioner was bona fide engaged in transportation.

THE ARGUMENT THAT THE COMMISSION
INJECTED THE ELEMENT OF "FITNESS"
INTO THIS PROCEEDING AS A REQUIRE-
MENT FOR THE GRANT OF A CERTIFICATE
IS WITHOUT MERIT.

POINT III

Petitioner argues that the Commission added a new standard of fitness when it considered the granting of the application. To the contrary, the Commission merely studies the operations performed by Petitioner and whether these were bona fide. The test was clearly set out as long ago as 1937, when in Brown Motor Freight Lines, Inc., Common Carrier Application, 2 M.C.C. 667, the Interstate Commerce Commission set out the proper elements to be considered:

The term bona fide as used in the "grandfather" clause means more than actual, genuine, physical operation. In law it means also a thing done in good faith without fraud or deceit. In dealing with interstate motor carriers, States have certain powers not dependent upon the absence of Federal legislation, and in the absence of such legislation they had certain other limited powers with which they could have established requirements with which such carriers were bound to comply. They have been upheld in the right to establish reasonable requirements for the registration of motor vehicles and the licensing of drivers. Hendrick v. Maryland, 235 U.S. 610. Under certain conditions, they had the right to

require such carriers to obtain a certificate or permit. Clark v. Poor, 274 U.S. 554.

In our opinion, the operations of the two partnerships were not conducted in good faith, but were carried on by means of concealment and subterfuge, with an obvious intent to avoid the existing requirements of the States of Michigan and Indiana relating to motor vehicle operations therein. In the circumstances, we conclude that their operations were not bona fide in character, and that therefore, applicant has no proper claim to a certificate under the "grandfather" provisions of the act.

Also in R. O. Burbridge, Common Carrier Application, 14 M.C.C. 412, that Commission stated:

It does not appear that applicant holds authority to operate as a carrier from any of the States, although he has conducted operation through most of them at one time or another. [Citing with approval Brown Motor Freight Lines, Inc., Common Carrier Application, 2 M.C.C. 667] We do not believe that the term "bona fide" can be applied properly to an operation attended by conduct such as that of applicant herein.

Petitioner's claim that it was bona fide engaged in transportation cannot be supported in law or in fact. The fact that Petitioner's interstate operations were being illegally and unlawfully performed by it was, or should have been well known to its officials who had been in business since 1957 (Tr. 23). Neither the Commission nor this Court can close its eyes to the fact that any interstate operations

performed by Petitioner were illegal -- it held no Interstate Commerce Commission authority, nor was it qualified to perform interstate transportation under the "exempt" section 203 (b)(8) of the Interstate Commerce Act. The evidence reveals that Petitioner was a law unto itself. (Tr. 227):

Q Were you of the opinion, Mr. Davis, that you could operate a motor bus carrying people for compensation from Bethesda, Maryland, to Mount Vernon, Virginia, and return without having a certificate from the Interstate Commerce Commission?

A Yes, sir.

Q And were you of the same opinion that you could operate a motor bus for compensation in the transportation of persons from the District of Columbia to points and places in Virginia, such as Mount Vernon, and return?

A Yes, sir.

Q And were you also of the opinion that you could operate a motor bus for compensation in the transportation of people from points in Virginia to points in the District of Columbia and Maryland and return?

A Yes, sir.

Q And you didn't require any authority, in your opinion, from the Interstate Commerce Commission to do that?

A I was informed that I was in a commercial zone and that I didn't need it --

Q All right.

A -- to go to Mount Vernon.

That's as far as we went.

Q Now, the information that you received was with respect to the operation of limousines: Isn't that true?

A No, sir. Buses.

Q Did you ever operate a vehicle -- and I'm talking now prior to March 22nd, 1961 -- with the name "Holiday Tours" or "Holiday Tours" labelled as the operator of the vehicle?

For example, you've seen on the buses, "D. C. Transit", "AB&W", "WV&M". Prior to March 22nd, 1961, did you ever operate a bus in the Washington Metropolitan Area with the name "Holiday Tours, Inc.", as the owner-operator?

A I don't recall.

Petitioner's argument that the Commission imposed a requirement of fitness upon Petitioner in the instant case is erroneous, as can be seen from comparison with a case in which fitness was a proper element of proof:

Facts of the Case

* * *

By stipulation, the record includes verified orders of the Supreme Court of the State of Mississippi referring to the conviction and sentencing of Walter L. Davis, in 1955, of embezzlement and a sentence to serve a term of five years in the state penitentiary. The stipulation also included a civil action by the United States Government against Walter L. Davis and two others for failure to repay a loan, for which judgment was entered for the United States, in 1941. Parties further stipulated that the United States Government brought a civil action against the Tennessee Mechanical Institute, Inc., Walter L. Davis, and others to recover fraudulent overcharges to the United States in connection with a trade school for veterans; that Walter Lee Davis

was president of the Tennessee Mechanical Institute, Inc.; that Davis filed an answer denying all of the allegations; and that the United States was awarded a judgment of \$27,500 in November, 1953, and that the case was dismissed in December 1955 upon motion of plaintiff.

* * *

Opinion

* * *

While the applicant has demonstrated its willingness to perform the service, the Commission is of the opinion and finds that the applicant has failed to establish that it is fit and able to perform the service. It is an unavoidable conclusion that Holiday Tours and Walter L. Davis are unalterably intertwined, and that Holiday Tours is, in fact, Walter Davis. The record is replete with inconsistent statements by, and evasiveness on the part of Davis, and these have left a profound unfavorable impression on us. Further, his past record is such that we do not feel that he should play a part in an industry so vested with the public interest. Nor can we give favorable judgment as to his financial fitness and ability. The applicant's financial exhibits, filed with the application, were discredited during the hearing by the applicant himself, and we can place no reliance on later exhibits because of Davis' repeated avowals of no knowledge that are in contradiction with the accountant's testimony that so much of the exhibits he testified to were based on information from Davis, and which he could not, or did not, verify.

In issuing Order No. 169, the Commission did not make a finding on the question of fitness. This was done because the application was denied on other grounds, and it was unnecessary to make a finding on the issue of fitness. However, the question of fitness was raised by the applicant in the application for reconsideration by requesting the Commission to make a favorable finding. Therefore, we

felt compelled to make a finding on the subject of fitness.*** Application of Holiday Tours, Inc. for Certificate of Public Convenience and Necessity, WMATC Order 206, Application 151, Docket 11. ^{1/}

Petitioner cites Earl W. Slagle - Contract Carrier Application, 2 M.C.C. 127, as supporting its defense against the results of illegality. Contra to Petitioner's argument, Slagle illustrates what Petitioner could have done in demonstrating good faith.

As to all the States traversed, except Wisconsin, applicant made visits to State authorities, in order to determine how to comply with the State laws. The agent who handles applicant's insurance testified that policies of insurance for the protection of the public were filed with the State authorities in all those States which required it prior to June 1, 1935. Applicant has paid various fees in substantial amounts in several of the States, has encountered various delays in obtaining permits, including delays caused by changes in the State laws, and has had difficulty in determining the extent to which he was subject to some of these laws, if at all. Therefore, the evidence establishes the general willingness of applicant to comply with State laws and the exercise of some diligence on his part to effect such compliance, but he was not in compliance with certain laws while operating in Wisconsin on June 1, 1935, and possibly his operation in Iowa at the time was not in compliance with the laws of that State.

Bearing in mind the fact that the time was the period before Federal regulation, that confusion existed as to Slagle's contract or common carrier status and that Slagle

^{1/} The opinion cited is a separate proceeding from the one before this Court.

had commenced partial compliance with State laws some three (3) years before his application, Petitioner cannot cloak itself in Slagle's shadow. Petitioner wrote its inaccurate letter to the Virginia Corporation Commission three months after the effective date of the Compact (Exhibit 5) and four (4) years after it commenced business (Tr. 23). Petitioner never applied to the Interstate Commerce Commission for authority to operate. Petitioner never paid fees for buses to Virginia, Maryland, or the District of Columbia. The contrast is marked.

There should be no question but that the Commission did not abuse its discretion in permitting A.B.&W. Transit Company and The Gray Line to intervene upon motion on the first day of the hearing. Indeed, it had a duty to develop all the facts in the public interest. Each of these carriers operates in the territory in which Petitioner seeks to obtain a certificate, and each of the carriers offers charter and sightseeing services.

CONCLUSION

Intervenors submit that the Orders of the Washington Metropolitan Area Transit Commission should be sustained, and the Petitioner for Review should be denied.

Respectfully submitted,

/s/ John R. Sims, Jr.
John R. Sims, Jr.

/s/ Harold Smith
Harold Smith

/s/ Gordon Allison Phillips
Gordon Allison Phillips
Attorneys for Intervenor
D. C. Transit System, Inc.

/s/ S. Harrison Kahn
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Attorney for Intervenor
A.B.&W. Transit Co.

/s/ Manuel J. Davis
Manuel J. Davis
Attorney for Intervenor
Washington, Virginia and
Maryland Coach Co., Inc.

A P P E N D I X

Act of August 9, 1935, 74th Congress,
Ch. 498, 49 Stat. 554.
U.S. Code, Title 49, Secs. 303(b) and 311.

§ 303. (b) Nothing in this chapter, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include:

* * *

(2) taxicabs, or other motor vehicles performing a bona fide taxicab service, having a capacity of not more than six passengers and not operated on a regular route or between fixed termini;

* * *

(8) the transportation of passengers or property in interstate or foreign commerce wholly within a municipality or between contiguous municipalities or within a zone adjacent to and commercially a part of any such municipality or municipalities, except when such transportation is under a common control, management, or arrangement for a continuous carriage or shipment to or from a point without such municipality, municipalities, or zone, and provided that the motor carrier engaged in such transportation of passengers over regular or irregular route or routes in interstate commerce is also lawfully engaged in the interstate transportation of passengers over the entire length of such interstate route or routes in accordance with the laws of each state having jurisdiction...

* * *

§ 311. -License Required

(a) No person shall for compensation sell or offer for sale transportation subject to this part of shall make any contract, agreement, or arrangement to provide, procure, furnish, or arrange, for such transportation or shall hold himself or itself out by advertisement, solicitation, or otherwise as one who sells, provides, procures contracts, or arranges for such transportation, unless such person holds a broker's license issued by the Commission to engage in such transactions: Provided, however, that no such person shall engage in transportation subject to this part unless he holds a certificate or permit as provided in this part. In the execution of any contract, agreement, or arrangement to sell, provide, procure,

furnish, or arrange for such transportation, it shall be unlawful for such person to employ any carrier by motor vehicle who or which is not the lawful holder of an effective certificate or permit issued as provided in this part: And provided further, That the provisions of this paragraph shall not apply to any carrier holding a certificate or a permit under the provisions of this part or to any bona fide employee or agent of such motor carrier, so far as concerns transportation to be furnished wholly by such carrier or jointly with other motor carriers holding like certificates or permits, or with a common carrier by railroad, express or water.

Act of August 3, 1956,
70 Stat. 983, Public Law 957, Chapter 928
U.S. Code, Title 49, Sec. 304

§ 304. (e) Subject to the provisions of subsection (f) hereof, the Commission is authorized to prescribe, with respect to the use by motor carriers (under leases, contracts, or other arrangements) of motor vehicles not owned by them in the furnishing of transportation of property--

(1) regulations requiring that any such lease, contract, or other arrangement shall be in writing and be signed by the parties thereto, shall specify the period during which it is to be in effect, and shall specify the compensation to be paid by the motor carrier, and requiring that during the entire period of any such lease, contract, or other arrangement a copy thereof shall be carried in each motor vehicle covered thereby; and

(2) such other regulations as may be reasonably necessary in order to assure that while motor vehicles are being so used the motor carriers will have full direction and control of such vehicles and will be fully responsible for the operation thereof in accordance with applicable law and regulations, as if they were the owners of such vehicles, including the requirements prescribed by or under the provisions of this part with respect to safety of operation and equipment and inspection thereof, which requirements may include but shall not be limited to promulgation of regulations requiring liability and cargo insurance covering all such equipment.

Act of August 22, 1957, Public Law 85-163, 71 Stat. 411.
U.S. Code, Title 49, Sec. 303(c)

§ 303. (c) Except as provided in [sections not applicable] of this title, no person shall engage in any for-hire transportation business by motor vehicle, in interstate or foreign commerce, on any public highway or with any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such person a certificate or a permit issued by the Commission authorizing such transportation...

Washington Metropolitan Area
Transit Regulation Compact,
Act of September 15, 1960, Public Law 86-794,
74 Stat. 103
Title II, Art. XII

§ 21. All rules, regulations, orders, decisions or other action prescribed, issued, made, or taken by the Interstate Commerce Commission, the Public Utilities Commission of the District of Columbia, the Public Service Commission of Maryland, or the State Corporation Commission of Virginia, and which are in force at the time this section takes effect, with respect to transportation or persons subject to this Act, shall remain in effect, and be enforceable under this Act and in the manner specified by this Act, according to their terms, as though they had been prescribed, issued, made, or taken by the Commission pursuant to this Act, unless and until otherwise provided by such Commission in the exercise of its powers under this Act.

Code of Maryland
(1959, ch. 545) Art. 78, Sec. 32

& 32. (a-1) When permits required.--With the exceptions enumerated in subsection (b) of this section, no motor vehicle shall be used in the public intrastate transportation for hire, or in any transportation for hire on regular schedules, and between fixed termini (as these terms are defined in Article 66-1/2, § 2) of passengers, or of property or freight carried by corporations, groups, associations engaged in the transportation of their stockholders, shareholders or members, or their property or freight, whether on the cooperative plan or

otherwise) or in the carriage of flammables, for hire over the improved streets or roads of this State or any political subdivision thereof, without a permit from the Commission to the owner, which shall prescribe the route and schedule, if any, of operation.

Code of Virginia
(1948, p. 976), Sec. 56-278.

§ 56-278. Required certificates of public convenience and necessity. -- No common carrier by motor vehicle or restricted common carrier by motor vehicle not herein exempted shall engage in intrastate operation on any highway within the State without first having obtained from the Commission a certificate of public convenience and necessity authorizing such operation, and a statement of the State Highway Commission that the law applicable to the proposed route or routes has been complied with as to size, weight, and type of vehicles to be used, and a like statement as to any increase in size, weight, and type of vehicles proposed to be operated by the applicant after such application is granted.

Code of Virginia
(1950, p. 368), Sec. 56-273.

§ 56-273. Definitions. (d) The term "common carrier by motor vehicle" means any person who undertakes, whether directly or by a lease or any other arrangement, to transport passengers or property for the general public by motor vehicles for compensation over the highways of the State, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail or water and of express or forwarding companies under this chapter.

(e) The term "restricted common carrier by motor vehicle" means any person who undertakes, whether directly or by a lease or other arrangement, to transport passengers or property of any restricted class or classes by motor vehicle for compensation, whether over regular or irregular routes.

Code of Virginia
(1956, c. 494), Sec. 56-338.40

§ 56-338.40. (c) "Sight-seeing carrier" means a restricted common carrier authorized to transport sight-seers under the provisions of this Chapter. Except as otherwise provided in this chapter, all provisions of law applicable to common carriers of passengers shall apply to sight-seeing carriers. The provisions of this chapter do not apply to special or chartered parties as defined in §56-285.

Regulations,
Interstate Commerce Commission,
6 F.R. 3042, 3675, 5042, 6309
Sec. 178.2(a)

· § 178.2 Definitions

(a) The term "special or chartered party", as used in the regulations in this part, means a group of persons who, pursuant to a common purpose and under a single contract, and at a fixed charge for the vehicle in accordance with the carrier's tariff, lawfully on file with the Commission, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after having left the place of origin.

Lease and Interchange of Vehicles
by Motor Carriers
Ex Parte No. MC-43
68 M.C.C. 553
Section 207.4

§ 207.4 Other than equipment exchanged between motor common carriers in interchange service as defined in §207.5 of these rules, authorized carriers may perform authorized transportation in or with equipment which they do not own only under the following conditions:

• • •

(a) The contract, lease, or other arrangement for the equipment.--

(1) Shall be made between the authorized carrier and the owner of the equipment.

(2) Shall be in writing and signed by the parties thereto, or their regular employees or agents duly authorized to act for them in the execution of contract, leases, or other arrangements.

(3) Shall specify the period for which it applied, which shall not be less than 30 days when the equipment is to be operated for the authorized carrier by the owner or employee or the owner;***

(d) The authorized carrier acquiring the use of equipment under this rule shall properly and correctly identify such carrier, during the period of the lease, contract, or other arrangement in accordance with the Commission's requirements in Ex Parte No. MC-41; Part 166, Identification of Motor-Carrier Vehicles. If a removable device is used to identify the authorized carrier as the operating carrier, such device shall be on durable material such as wood, plastic, or metal, and bear a serial number in the authorized carrier's own series so as to keep proper record of each of the identification devices in use.